

1                   UNITED STATES DISTRICT COURT  
2                   NORTHERN DISTRICT OF ALABAMA  
3                   SOUTHERN DIVISION

4                   THE UNITED STATES OF AMERICA,

CASE NO. 2:17-cr-00419-AKK

5                   Plaintiff,

Abdul K. Kallon  
United States District Judge

6                   v.

7                   JOEL IVERSON GILBERT,  
8                   STEVEN GEORGE McKINNEY, and  
9                   DAVID LYNN ROBERSON,

July 10, 2018  
Birmingham, Alabama

Defendants.

10                  JURY TRIAL - VOL. 11 of 19

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12                  Proceedings recorded by mechanical stenography, transcript  
13                  produced by computer.

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## 1 GOVERNMENT'S EXHIBITS

2 NO.	3 DESCRIPTION	4 REFERENCED	5 ADMITTED
10	12/10/14 email from Gilbert to McKinney, Andrews, Roberson, Bradley, and Phillips notifying them of upcoming EPA meeting	2944	
19	Audio of Robinson's meeting with EPA	2901	
32	12/22/14 email from Roberson to Gilbert discussing getting the AEMC chair to respond to GASP presentation	2807	
62	2/16/15 email from Phillips to Gilbert regarding Rep. Robinson and Brown meeting	3039	
68	2/20/15 agenda for AEMC meeting	2825	
69	2/20/15 minutes for AEMC meeting with transcript, agenda, requests, and resolution	2811	
70	2/23/15 email from Gilbert to Simpson forwarding Rep. Robinson AEMC video link	2836	2837
71	2/20/15 email from Simpson to Gilbert reporting on Rep. Robinson AEMC appearance	2831	2831
72	Balch and Bingham's <i>Environmental Update</i> concerning AEMC 2/20/15 meeting	2838	2839
73	2/20/15 email from Gilbert to McKinney forwarding Summary of Rep. Robinson AEMC appearance	2835	2835
74	2/23/15 email from Simpson to Gilbert regarding Rep. Robinson at AEMC meeting	2837	2838
75	2/23/15 email from Gilbert to McKinney and Roberson attaching Toney letter to LeFleur	3043	
91	Senate Joint Resolution 97	3105	
127	SEC Statements for Balch & Bingham for ABC Coke project	2936	
129	Balch time sheets	2949	
142	10/10/13 email from Glenn to Gilbert and Roberson with attached Superfund Site Proposal	2931	
145	10/31/13 email from Phillips to Glenn and Vaughan with attached draft SEC and Balch agreement	3007	

## 1 GOVERNMENT'S EXHIBITS

2 NO.	3 DESCRIPTION	4 REFERENCED	5 ADMITTED
146	11/22/13 Agreement between Balch & Bingham and Southeast Engineering & Consulting LLC	2934	
147	1/7/14 email from Catrena to Glenn regarding EPA public meeting	3073	
148	6/27/14 email from McKinney to Glenn and others with attached 6/11/14 letter from LeFleur to Toney	3018	
149	9/16/14 email from Glenn to Phillips discussing communication with McKinney	2938	
153	2/12/15 email from Phillips to Gilbert discussing North Birmingham community activity	2951	
154	2/20/15 email from Gilbert to Phillips and Glenn regarding meeting on Stakeholder Strategy PowerPoint	2956	
156	3/6/15 email from Glenn to Andrews, Jones, Gilbert, and Phillips discussing ongoing work	2965	
161	2/19/15 email from Phillips to Gilbert and Roberson regarding Stakeholder Strategy PowerPoint	2958	
189	1/15/15 email from Gilbert to Tambling and Atcheson with attached AG draft comments	3110	
208	9/9/15 email from Gilbert to Roberson with attached Get Smart Narrative	3058	
212	Homeowner Letter from Get Smart	3061	3062
264	7/23/15 email from Gilbert to Brown with attached SJR 97	2802	
266	2/4/15 Drummond/ABC Coke Staff Meeting notes	2876	

**DEFENDANT'S EXHIBITS**

NO.	DESCRIPTION	REFERENCED	ADMITTED
551	Balch billing statements 35th Avenue Superfund	3111	
1019	1.27.15 email Lanier Brown to LeFleur re: ATSDR shows no human risk	2800	
1161	1.10.14 email Glenn to David Moore re: SEC action items	2981	

1       (The following proceedings were had in open court in the  
2 presence and hearing of the jury.)

3           THE COURT: Good morning, everyone. Be seated, please.

4           When we left yesterday, Mr. Sharman was cross-examining  
5 Mr. Brown. Let's pick up from where we left off, please.

6           Your witness, Mr. Sharman.

7           MR. SHARMAN: Thank you, Your Honor.

8                           LANIER BROWN,

9 previously sworn, was examined and testified further as  
10 follows:

11 CROSS-EXAMINATION BY MR. SHARMAN (resumed) :

12 Q. Good morning, Mr. Brown.

13 A. Good morning.

14 Q. Yesterday you and Mr. Martin went over some  
15 correspondence that you had with Director Lance LeFleur,  
16 the director of ADEM. And I'd like to follow up on that,  
17 if I may.

18 MR. SHARMAN: May I approach, Your Honor?

19 THE COURT: You may.

20 (Defendant's Exhibit 1019 was referenced.)

21 MR. SHARMAN: I want to show to the government and to  
22 Chairman Brown what's been marked as Defendant's Exhibit  
23 1019.

24 Q. Chairman Brown, if you would, take a look at that,  
25 please, sir, and let me know when you've had a chance to do

1       that.

2       A. Yes.

3       Q. Do you recognize 1019 as being email correspondence  
4       between you and Director LeFleur?

5       A. Yes.

6           MR. SHARMAN: Mr. Gilbert moves in evidence Defendant's  
7       Exhibit 1019, please.

8           THE COURT: Any objections?

9           MR. MARTIN: Judge, I do object. Relevance.

10          THE COURT: Okay. Mr. Sharman, may I see a copy? And  
11       if you can, move on to a different topic for now, please.

12          MR. SHARMAN: All that is running together.

13          THE COURT: Okay. Thanks.

14          Mr. Brown has already testified about his thoughts on  
15       this topic. The exhibit itself, I'll sustain the  
16       objection. You are free to ask him again about his  
17       opinions, similar to what you did yesterday.

18          MR. SHARMAN: Thank you, Your Honor.

19          Q. Did you conclude, Chairman Brown, based on your review  
20       of certain studies, that there was no human health risk  
21       sufficient to justify an NPL listing?

22          A. That was what I read in the studies.

23          Q. I beg your pardon?

24          A. That's what I read in the studies.

25          Q. Okay. And is that what you concluded? Did you believe

1 that?

2 A. Yes, I accepted the studies.

3 Q. And did you believe that in the absence of appropriate  
4 evidence to support an NPL listing, that such a listing  
5 would be adverse to the State of Alabama generally and the  
6 citizens of the affected areas? Did you believe that?

7 MR. MARTIN: Objection. Relevance.

8 THE COURT: I'll sustain.

9 Q. (BY MR. SHARMAN:) Did you believe that would just be  
10 wrong?

11 MR. MARTIN: Objection. Relevance.

12 THE COURT: I'll sustain.

13 (Government's Exhibit 264 was referenced.)

14 Q. (BY MR. SHARMAN:) All right. Yesterday, Chairman  
15 Brown, you and Mr. Martin discussed, I believe,  
16 Government's Exhibit 264, which is in evidence.

17 MR. SHARMAN: Sam, could you pull up 264, please, and  
18 highlight the top just to remind us?

19 Q. And this was an email from Mr. Gilbert to you copying  
20 Mr. Glenn and blind copying Scott Phillips, right?

21 A. Yes.

22 Q. Okay. And this is an email in which Mr. Gilbert  
23 attached a copy of a joint resolution that had passed the  
24 Alabama legislature. Do you remember that?

25 A. I do.

1 Q. And you didn't find anything wrong or inappropriate or  
2 unusual about Mr. Gilbert sending you a copy of the  
3 resolution, right?

4 A. I think I asked for it.

5 Q. You believe you asked for it?

6 A. I saw him somewhere and just asked him what was going  
7 on. And he mentioned, I believe, that the Senate and the  
8 House -- legislature had passed this. And I was not aware  
9 that it passed. I think I asked for a copy.

10 MR. SHARMAN: You can take that down, Sam. Thank you.

11 Q. You also answered a few questions, I believe, about  
12 public officials and whether public officials had  
13 previously appeared before the commission. Do you remember  
14 some of those questions?

15 A. Yes.

16 Q. Okay. And, in fact, this year, Mayor McCarty of  
17 Wilsonville, Alabama, actually appeared before the  
18 commission; isn't that right?

19 A. Yes.

20 Q. Mr. Martin showed you an email that been sent to you by  
21 Trey Glenn conveying some talking points from industry.  
22 You remember that discussion with Mr. Martin?

23 A. I do remember it.

24 Q. And there was nothing wrong or inappropriate or unlawful  
25 about you getting talking points from industry, right?

1     **A.** No.

2     Q. I beg your pardon?

3     **A.** No.

4     Q. And, in fact, you find such communications useful in  
5     your job as chairman, right?

6     **A.** I've -- yes. Not just from industry.

7     Q. From anybody who wants to send you information, you find  
8     it useful, right?

9     **A.** Any stakeholder, citizen, regulating community,  
10    environmental community.

11    Q. All right. And then Mr. Martin showed you a variety of  
12    documents, letters, drafts of letters, emails that he said  
13    were drafted by Joel Gilbert. Do you remember some of  
14    those discussions with Mr. Martin?

15    **A.** Yes.

16    Q. All right. I won't walk us through all of those, but  
17    with regard to any letter, proposal, set of talking points,  
18    or other information, it doesn't matter to you whether Joel  
19    Gilbert drafted something or edited something or  
20    contributed something, but rather what matters to you is  
21    what is the communication and who is sending it to you,  
22    right?

23    **A.** What matters most is what is the communication and what  
24    is it based on, is it fact-based.

25    Q. And you have found, haven't you, that everything Joel

1      Gilbert has sent to you or shared with you has turned out  
2      to be fact-based or evidence-based, right?

3      A. Yes.

4      Q. Mr. Martin asked you about a meeting or get-together  
5      prior to the February 2015 commission appearance that -- or  
6      during which you met Oliver Robinson. Do you remember some  
7      of those questions and answers?

8      A. Yes.

9      Q. In that meeting or in that discussion with Oliver  
10     Robinson, Mr. Robinson wasn't putting any pressure on you  
11     to do anything or not do anything, right?

12     A. We did not have any substantive conversation --

13     Q. And because you didn't have any substantive --

14     A. -- about the NPL listing and the Superfund site.

15     Q. And because you didn't have any substantive conversation  
16     about the NPL listing, he wasn't putting any pressure on  
17     you to do anything or not do anything, right?

18     A. He didn't ask me to do anything.

19     Q. And I think the main thing you recall is he mentioned  
20     your father, right?

21     A. I -- yes.

22     Q. Okay. And you remember that because your father was a  
23     well-respected state court judge, right?

24     A. Do I have to -- yes.

25            MR. SHARMAN: Court's indulgence, Your Honor.

1 (Pause.)

2 MR. SHARMAN: Mr. Brown, I have no further questions at  
3 this time. Thank you very much.

4 THE COURT: Mr. Gillen?

5 MR. GILLEN: Thank you, Your Honor.

6 CROSS-EXAMINATION BY MR. GILLEN:

7 Q. Good morning, Mr. Brown. How are you?

8 A. I'm well. How are you?

9 Q. I'm well. Thank you. My name is Craig Gillen, and I'm  
10 one of the attorneys representing Steve McKinney.

11 On direct examination, I believe you indicated that you  
12 had met Mr. McKinney at a restaurant; is that correct?

13 A. Yes.

14 Q. Just as sort of a quick introduction in the restaurant  
15 while both of you happened to be dining there?

16 A. We were seated at adjacent tables, and he leaned over  
17 and spoke and, I would say, reintroduced himself. But I  
18 didn't recognize him when I walked in the restaurant --

19 Q. Okay.

20 A. -- and sat down.

21 Q. But to be clear, you have never had any discussions or  
22 communications with Mr. McKinney about the 35th Avenue  
23 Superfund Site or the NPL listing or any of the matters  
24 about which you have testified here in court, have you?

25 A. No.

1 MR. GILLEN: That's all I have. Thank you.

2 THE COURT: Thank you, Mr. Gillen.

3 Mr. Bloomston?

4 MR. BLOOMSTON: Yes. Good morning. May it please the  
5 Court.

6 Mr. Brown, Brett Bloomston. I represent David  
7 Roberson.

8 (Government's Exhibit 32 was referenced.)

9 MR. BLOOMSTON: Sam, could you pull up Government's  
10 Exhibit 32, please? This is in evidence. And if you could  
11 highlight the top email from David Roberson to Joel  
12 Gilbert?

13 CROSS-EXAMINATION BY MR. BLOOMSTON:

14 Q. Mr. Brown, yesterday you were asked about this email.  
15 This email is not to you or from you, is it?

16 A. No.

17 Q. But you were asked some questions about it, and I just  
18 would like to follow up quickly.

19 That first sentence where Mr. Roberson is asking Joel  
20 Gilbert if there's a chance that they could get you to  
21 respond, you being the EMC chair, to Ms. Propst's or GASP's  
22 presentation, there's a question mark at the end of that  
23 sentence, is there not?

24 A. There is.

25 Q. Does it appear that Mr. Roberson is asking Joel Gilbert,

1 Drummond's attorney, if there is a possible way to get you  
2 to speak?

3 A. Yes.

4 Q. Okay. And then he goes on to say what his opinion is.  
5 And I believe he says the "C" word is his opinion of what  
6 they are putting out, "they" being GASP.

7 In that last sentence, "just my personal opinion" -- do  
8 you see that?

9 A. Yes.

10 Q. Does it appear that Mr. Roberson is again asking  
11 Drummond's lawyer if this course of action is a correct  
12 course of action? Does that appear to you the same way?

13 A. That's what it says.

14 Q. Okay. And Mr. Martin asked you, no one, David Roberson,  
15 Joel Gilbert, asked you to respond to GASP at that next  
16 meeting, did they?

17 A. No.

18 Q. So does it appear to you that Mr. Gilbert gave the  
19 advice or that that course of action never took place?

20 A. Nobody ever talked to me and asked me to do what is  
21 suggested here.

22 Q. Okay. Okay. And, Mr. Brown, you have discussed with us  
23 that ADEM, the agency, and AEMC frequently get  
24 correspondence from both sides of controversial issues,  
25 correct?

1       A. Yes.

2       Q. And in this particular matter dealing with the 35th  
3       Avenue Superfund Site, you were provided information from  
4       Balch, correct?

5       A. Yes.

6       Q. And you were provided information from consultants that  
7       were working for the law firm, correct?

8       A. Yes.

9       Q. And you were provided information from Get Smart, that  
10      agency, correct?

11      A. Yes.

12      Q. Okay. And on the flip side of the coin, you were  
13      provided information from the environmental group GASP,  
14      correct?

15      A. Yes.

16      Q. And do you remember yesterday that Mr. Martin asked you  
17      if you were familiar whether Get Smart was affiliated with  
18      the Oliver Robinson Foundation and you just didn't know?

19      A. Correct.

20      Q. Did Mr. Martin or did anyone ever ask you if you were  
21      aware that GASP is funded from out-of-state anti-coal  
22      interests?

23            MR. MARTIN: Objection. Relevance.

24            THE COURT: Sustained.

25      Q. (BY MR. BLOOMSTON:) All the information that was

1 provided to you, sir, was it -- I believe you've testified  
2 was based on science, correct?

3 A. Information from whom?

4 Q. I'm sorry. Information that helped form the agency's  
5 opinion on the Superfund site.

6 A. The agency's, ADEM's opinion, as I understand it, was  
7 based on the scientific studies --

8 Q. Okay.

9 A. -- from ADEM that must be considered legally by EPA for  
10 designation of a Superfund site or adding a site to the  
11 NPL.

12 Q. Okay. And as the agency chair, you've discussed this  
13 with your fellow folks that are on the commission with you  
14 before any decisions are made, correct?

15 A. Well, that decision -- the position was taken by ADEM.  
16 It really only came to the commission when ADEM took a  
17 position. And then GASP came to ask that the commission  
18 influence ADEM to reverse course.

19 Q. So, again, the commission really did not have a decision  
20 to make. It supported Mr. LeFleur and ADEM's branch on  
21 what they formed their opinion on, correct?

22 A. Right. I had discussions with Director LeFleur --

23 Q. Okay.

24 A. -- about, you know, what was going on, why ADEM was  
25 taking the position that it was taking. He provided me

1 with the Jefferson County Department of Health study. He  
2 provided me with the ATSDR study. And I reviewed those and  
3 was comfortable that the position ADEM had taken was  
4 correct.

5 Q. And you were satisfied that this was all based in fact,  
6 correct?

7 A. That it was based on the scientific studies.

8 Q. And it wasn't going to adversely affect the communities  
9 that we're dealing with?

10 A. Based on what I read in the scientific studies.

11 Q. Yes, sir. And you never discussed the North Birmingham  
12 Superfund site or the NPL listing with David Roberson, did  
13 you?

14 A. Not to my recollection.

15 MR. BLOOMSTON: Thank you, sir.

16 THE COURT: Any redirect?

17 MR. MARTIN: Yes, Your Honor, briefly.

18 THE COURT: You may.

19 (Government's Exhibit 69 was referenced.)

20 MR. MARTIN: Would you put up Number 69, please?

21 REDIRECT EXAMINATION BY MR. MARTIN:

22 Q. Good morning, Mr. Brown.

23 A. Good morning.

24 Q. We've called up on the screen Government's Exhibit  
25 Number 69. And would you confirm that these are the

1 minutes of the February 20, 2015 meeting when Oliver  
2 Robinson spoke?

3 A. Yes.

4 Q. Okay. And I want to ask you a few questions.

5 Mr. Sharman asked you a few questions about them, and I  
6 have a few more. Could you go to page 12 of this exhibit,  
7 please? And on the upper left-hand part of that, please.

8 And you remember during cross by Mr. Sharman we listened  
9 to a one-minute clip of your introduction of the public  
10 comment period?

11 A. Yes.

12 Q. Okay. And I just want to confirm that you said these  
13 words: "Moving on to the public comment period, we have a  
14 request from State Representative Oliver L. Robinson, Jr.  
15 on behalf of concerned citizens working and residing in  
16 North Birmingham." You said those words, right?

17 A. Yes.

18 Q. Okay. And were you interested to listen because a state  
19 legislator from North Birmingham was coming to the  
20 commission to speak on behalf of concerned citizens?

21 A. I would -- I'm interested when anybody comes to speak.

22 Q. Well, would you agree that the environmental issues in  
23 North Birmingham were serious ones?

24 A. Absolutely. They're all serious.

25 Q. And the position of the citizens who live and work in

1 the area matter?

2 A. Absolutely.

3 Q. Okay. And the position of a state legislator who  
4 represents people in that area matter?

5 A. Yes.

6 Q. Okay. And no other legislator had come to speak at the  
7 commission prior to Oliver Robinson, as far as you  
8 remember?

9 MR. SHARMAN: Objection. Asked and answered a few  
10 times.

11 THE COURT: It's redirect. I'll allow it.

12 A. Not during my tenure.

13 Q. (BY MR. MARTIN:) Okay. This statement that you made  
14 about Oliver Robinson appearing on behalf of concerned  
15 citizens, did you take that language from the letter that  
16 Oliver Robinson sent to you requesting permission to speak?

17 A. Our executive assistant, Debi, did.

18 Q. When you were reading -- you would agree that language  
19 came from the letter that he sent to you?

20 A. Yes.

21 Q. Okay. I can show you the letter if you want to see it.

22 A. Debi prepares the agenda and she also prepares a more  
23 detailed outline for me to -- you know, basically  
24 CliffsNotes for the meeting. And so she would take the  
25 language from the letter and include it so that when I

1 introduced it, I didn't have to go find the letter.

2 Q. But you would agree that that language that she wrote  
3 for you to say came from Oliver Robinson's letter?

4 A. It is a quote from his letter.

5 Q. Were you assuming that the information that Oliver  
6 Robinson's letter contained was truthful?

7 A. Yes. But the only information I recall that was in  
8 there is who -- when he said he wanted to come speak.

9 Q. And who he was going to speak on behalf of?

10 A. I didn't think about it. I just accepted that that's  
11 what it said and that's why he was there.

12 Q. And you accepted that when he sent that letter to you,  
13 those words were true?

14 A. Yes.

15 Q. Okay. Because you like to make decisions based on  
16 facts, as you said?

17 A. Try to.

18 Q. Okay.

19 MR. MARTIN: Could we go to page -- on that same page,  
20 go down to the -- back up. On the bottom right-hand part  
21 of that, please.

22 Q. Tell me if I'm reading this right, what Oliver Robinson  
23 said during one part of his statement. "And one company,  
24 Walter Coke, in the area has accepted responsibility for  
25 the part they have contaminated. But the thing that gets

1 me and what is in the process of hurting the residents in  
2 that area is that the EPA has included five other  
3 corporations in on this process, but there has been no  
4 reports stating that these individuals are culpable in any  
5 way. And where that hurts the residents is the fact that  
6 we will have decades of litigation that will occur because  
7 of these five individual companies being added to Walter  
8 Coke." Did Oliver Robinson state that to the commission?

9 A. Yes.

10 Q. Okay.

11 MR. MARTIN: If we could go to the next page, 13,  
12 please. And the lower left-hand part, please.

13 Q. Did Oliver Robinson tell you and the other  
14 commissioners, "I'm hoping that this body, along with ADEM,  
15 can come, if there are current reports or current ways, to  
16 let us know through testing or whatever that can be done to  
17 find out who is culpable in this situation"? Do you see  
18 where he said that?

19 A. Yes.

20 Q. Okay.

21 MR. MARTIN: If we could go to -- back out of that and  
22 go to the upper right-hand part, please.

23 Q. And did he say in conclusion, "And just in closing,  
24 again, Mr. Chairman and members, my request here today is  
25 if ADEM has the ability or if there are any reports out

1 there that they can share that will help us to narrow down  
2 who's responsible, then that would be very helpful for  
3 residents in my area"? Did he say that?

4 A. Yes.

5 Q. Okay.

6 MR. MARTIN: That's all I have. Thank you.

7 THE COURT: Mr. Sharman?

8 MR. SHARMAN: Very briefly, Your Honor.

9 RECROSS-EXAMINATION BY MR. SHARMAN:

10 Q. Chairman Brown, you have not found anything that Oliver  
11 Robinson said to the Alabama Environmental Management  
12 Commission in that appearance to be untrue, right?

13 A. I'm not aware of anything.

14 Q. I'm sorry?

15 A. I'm not aware of anything he said that was untrue.

16 Q. And Oliver Robinson didn't ask the commission to make a  
17 decision about anything, right?

18 A. He did not.

19 Q. And part of that was because the commission had no  
20 decision to actually make, right?

21 A. No.

22 Q. And if Oliver Robinson testified that everything in his  
23 letter to the commission was true, you wouldn't have a  
24 reason today to doubt that, right?

25 MR. MARTIN: Objection.

1 THE COURT: Sustained.

2 MR. SHARMAN: No questions, Your Honor. Thank you.

3 THE COURT: Mr. Gillen?

4 MR. GILLEN: No questions, Your Honor.

5 THE COURT: Thank you. Mr. Bloomston?

6 MR. BLOOMSTON: Your Honor, just one follow-up  
7 question.

8 RECROSS-EXAMINATION BY MR. BLOOMSTON:

9 Q. Mr. Brown, Mr. Martin asked you did the stakeholders or  
10 did the stakeholders in Tarrant and Inglenook, did they  
11 matter to you. You remember that question he just asked  
12 you?

13 A. Yes.

14 Q. Did anything come to your attention while chairman of  
15 the AEMC board that gave you any reason to believe that  
16 Drummond or Balch took any action to harm that community in  
17 their advocacy?

18 MR. MARTIN: Objection. Relevance.

19 MR. BLOOMSTON: He just asked -- he just asked that  
20 question.

21 THE COURT: You may answer, Mr. Brown.

22 A. I'm not aware of anything.

23 MR. BLOOMSTON: Okay. Thank you, sir.

24 THE COURT: Anything else of Mr. Brown?

25 MR. MARTIN: No, Your Honor. May he be excused?

1           THE COURT: Any objections from any of the defendants?

2           MR. SHARMAN: No.

3           MR. BLOOMSTON: No, sir.

4           MR. GILLEN: No, Your Honor.

5           THE COURT: Mr. Brown, have a good day, sir.

6           THE WITNESS: Thank you.

7           (Witness excused.)

8           THE COURT: Who is the government's next witness?

9           MR. WARD: Your Honor, the government calls Talmadge  
10 Simpson.

11           (Witness sworn.)

12           THE COURTROOM DEPUTY: Please state and spell your  
13 first and last name for the record.

14           THE WITNESS: My full name is Michael Talmadge Simpson.  
15 Michael, M-i-c-h-a-e-l, Talmadge, T-a-l-m-a-d-g-e, Simpson,  
16 S-i-m-p-s-o-n. But I go by Tal, T-a-l.

17           THE COURTROOM DEPUTY: And what city and state do you  
18 reside in?

19           THE WITNESS: Birmingham, Alabama.

20           THE COURTROOM DEPUTY: Thank you.

21           THE COURT: Mr. Ward, you may begin.

22           MR. WARD: Thank you, Your Honor.

23                           MICHAEL TALMADGE SIMPSON,

24           duly sworn, was examined and testified as follows:

25           DIRECT EXAMINATION BY MR. WARD:

1 Q. Good morning, Mr. Simpson.

2 A. Good morning.

3 Q. Where do you work?

4 A. At BL Harbert International.

5 Q. What's your position there?

6 A. Associate compliance officer.

7 Q. How long have you been there?

8 A. Year and a half.

9 Q. What did you do before that?

10 A. I was an attorney at Balch & Bingham.

11 Q. How long were you at Balch & Bingham?

12 A. Full-time as an attorney from August 2011 till January  
13 2017.

14 Q. Do you have a law degree?

15 A. I do.

16 Q. What was your position at Balch?

17 A. I was a staff attorney and then senior staff attorney in  
18 the environmental and natural resources practice group.

19 Q. Okay. All right. Can you tell us what a staff attorney  
20 does at Balch?

21 A. I mean, pretty much the same thing an associate does.

22 Q. Do you know Joel Gilbert?

23 A. I do.

24 Q. Did you do any work for him during your time at  
25 Balch?

1     **A.** I did.

2     Q. Okay. Do you know Steve McKinney?

3     **A.** I do.

4     Q. Did you do work for him during your time at Balch?

5     **A.** I did.

6     Q. Let's focus on the 2014-2015 time frame. During that  
7     time frame, did you do work on any matters for the Drummond  
8     Coal Company?

9     **A.** Yes.

10    Q. Okay. When did you begin doing work for Drummond?

11    **A.** It was probably late summer, early fall 2014.

12    Q. Okay. Was Drummond an existing client of Balch at the  
13     time, to your knowledge?

14    **A.** No.

15    Q. Okay.

16    **A.** I was there -- they -- I was already working there for a  
17     couple of years before they became a client.

18    Q. You were working at Balch for a couple of years when  
19     Drummond became a client. Do you know how Balch came to  
20     hire -- Drummond came to hire Balch?

21    **A.** Yeah. They had some problems, and we were qualified to  
22     help them, and they hired us.

23    Q. Okay. And when you say "they had some problems," you  
24     mean Drummond had --

25    **A.** Drummond, yes.

1 Q. Were those environmental issues?

2 A. They had some environmental issues, and we had a good  
3 track record of environmental law. So two Birmingham-based  
4 companies, we were positioned well to help them, so they  
5 hired us.

6 Q. And the issues that you referred to, were those issues  
7 regarding the 35th Avenue Superfund Site?

8 A. Yes.

9 Q. Do you know who at Balch was involved in making the  
10 pitch to Drummond for this work?

11 A. Not exactly because I wasn't there.

12 Q. Okay. Was Mr. Gilbert one of the lawyers who was  
13 involved in working for Drummond on these matters?

14 A. Yes.

15 Q. Okay. What about Mr. McKinney?

16 A. Yes.

17 Q. Okay. Did you work on a matter at Balch called the 35th  
18 Avenue Superfund Site?

19 A. I did.

20 Q. Okay. Can you tell us what that matter concerned?

21 A. That was EPA was looking at a site in North Birmingham  
22 considering adding that site to what's called the National  
23 Priorities List, which is a list of property around the  
24 country that EPA deems necessary to clean up. And they  
25 were looking at the site in North Birmingham that they

1 called 35th Avenue.

2 Q. Okay. And did you work on a matter for Drummond related  
3 to a GASP petition?

4 A. I did.

5 Q. Okay. And was that related to whether to expand the  
6 Superfund site into the Tarrant area?

7 A. Yeah. More or less, yes.

8 Q. Okay. During 2014 and '15, how much of your time was  
9 devoted to these two Drummond matters?

10 A. I couldn't tell you exactly, but a good bit.

11 Q. Okay. And what partners did you work for on these  
12 matters?

13 A. I worked with Joel Gilbert, some with Steve McKinney. I  
14 worked with an attorney in the Atlanta office, Rich Glaze.  
15 I worked a little bit with some other -- there were several  
16 other attorneys.

17 Q. Okay.

18 A. I don't know if you want me to go into that.

19 Q. Well, what kind of work did you do on these matters?  
20 Generally, what type --

21 A. A wide variety of things.

22 Q. Okay.

23 A. I would say a lot of my time was devoted to managing  
24 public records requests both at the state level and federal  
25 level through a law called the FOIA, Freedom of Information

1       Act. That's where government agencies are required to  
2 provide copies of public records.

3           And we, as part of kind of our due diligence process for  
4 the client, we filed a lot of these requests to get  
5 documents related to EPA's matters and the process of  
6 requesting them, gathering them, reviewing them, finding  
7 things that were important, managing them, organizing them,  
8 all that. I did a lot of that work but, of course, many  
9 other things.

10         Q. Okay. Where did you get your work from? Was it  
11 assigned to you by other attorneys at the firm?

12         A. Yes.

13         Q. Okay. And that included Mr. Gilbert and Mr. McKinney?

14         A. It did.

15         Q. Do you recall Balch holding internal staff meetings  
16 regarding the work on Drummond matters?

17         A. Yes.

18         Q. Okay. Were those periodic meetings?

19         A. Yes. Early on they were -- we had a few kind of set,  
20 more regular meetings.

21         Q. Did you attend any of those meetings?

22         A. I did.

23         Q. Okay. How many would you say you attended?

24         A. Four, five maybe.

25         Q. How many other people would come to attend these

1 meetings?

2 A. Eight or ten maybe.

3 Q. Okay. Did somebody generally lead the meetings?

4 A. It was very collaborative. We all kind of took turns  
5 talking about, you know, the piece that we were working on.  
6 I'd say generally they were led by the more senior  
7 partners.

8 Q. Okay. Would Joel Gilbert and Steve McKinney typically  
9 attend these meetings?

10 A. Yes.

11 Q. Okay. I want to ask you about the AEMC. Are you  
12 familiar with the AEMC?

13 A. I am.

14 Q. Okay. During your time at Balch, did you ever attend  
15 any AEMC meetings?

16 A. A few.

17 Q. Okay. Was it common for Balch to send an attorney to  
18 those meetings?

19 A. Every one.

20 Q. Okay. Why is that?

21 A. Well, if we were going to be one of the leading, if not  
22 the leading environmental practice groups in the State of  
23 Alabama, we just felt like it was important to cover those  
24 meetings. So we would send somebody down to every one.

25 Q. Would Balch bill clients for the time that this attorney

1 spent at those meetings?

2 A. No.

3 Q. Okay. In your time at Balch, how many meetings would  
4 you say you attended?

5 A. Probably four, five maybe.

6 Q. Do you recall covering an AEMC meeting in 2015 where  
7 Oliver Robinson made a presentation?

8 A. Yes.

9 Q. Okay. And why did you cover that meeting in particular?

10 A. It was my turn.

11 Q. Okay. So there was a rotation of associates and staff  
12 attorneys to cover these meetings?

13 A. Correct.

14 (Government's Exhibit 68 was referenced.)

15 MR. WARD: Can we have Government's Exhibit 68?

16 Q. This is a document in evidence. Mr. Simpson, do you  
17 recognize this as the agenda for the AEMC meeting we have  
18 just been discussing?

19 A. Yes.

20 Q. The date is February 20, 2015. Do you see at the bottom  
21 of the page -- I think if we zoom out, you can see that the  
22 agenda, it says that the agenda will be available on the  
23 website.

24 A. Yep.

25 Q. Do you recall pulling this agenda before traveling to

1 the meeting?

2 A. Yes.

3 Q. And then if we go to page 2, at the bottom of the page  
4 there's a reference to a public comment period and a  
5 reference to requests from the public to address the  
6 commission. Do you see that?

7 A. I do.

8 Q. And there's a Request 1 listed there on that page. And  
9 then if we go to the next page, the top of the page,  
10 there's a Request 2. Who is the Request 2 from? Can you  
11 read that for us?

12 A. "State Representative Oliver L. Robinson, Jr."

13 Q. Okay. Go on.

14 A. "On behalf of the concerned citizens working and  
15 residing in North Birmingham."

16 Q. Okay. Do you recall seeing this information before you  
17 went down to the meeting?

18 A. I'm sure I did, but I don't remember specifically.

19 Q. Do you recall knowing before you went down to the  
20 meeting that Oliver Robinson would be making a  
21 presentation?

22 A. Yes.

23 Q. Okay. At the time, did you know who Oliver Robinson  
24 was?

25 A. Not really. No.

1 Q. Okay. Had you ever met him?

2 A. No.

3 Q. Did you know that he was a state legislator?

4 A. Well, yes. It's titled "State Representative."

5 Q. From the document itself, you knew that he was a  
6 state --

7 A. Yes.

8 Q. -- legislator. Did you know at the time of any  
9 connection between Oliver Robinson or a foundation he  
10 controlled and Balch?

11 A. No.

12 Q. And you mentioned earlier that you attended staff  
13 meetings to discuss your work on these matters when you  
14 worked for Joel Gilbert and Steve McKinney. Did you ever  
15 hear from them about a connection between Oliver Robinson  
16 or his foundation --

17 A. No.

18 Q. -- and Balch? Did you ever hear Oliver Robinson's name  
19 at all in connection with your work on Drummond matters at  
20 Balch?

21 A. I don't believe so.

22 Q. Did you have any reason before going down to attend this  
23 meeting to believe that Joel Gilbert had asked Oliver  
24 Robinson to go make this presentation?

25 A. No.

1 Q. Did you have any reason to believe that Joel Gilbert had  
2 strategized with Steve McKinney and others about the  
3 comments Oliver Robinson would make?

4 A. No.

5 Q. So the meeting was on February 20, 2015. Where was the  
6 meeting located? Where did it take place?

7 A. In the ADEM, Alabama Department of Environmental  
8 Management, complex in Montgomery.

9 Q. Okay. And were you working in the Birmingham office of  
10 Balch at the time?

11 A. Yes.

12 Q. Okay. So did you drive down that morning to --

13 A. Yes.

14 Q. -- to the meeting?

15 A. Yes.

16 Q. Did you go into the office at Balch first?

17 A. Probably.

18 Q. Before you went down to Montgomery for the meeting, did  
19 you talk to Joel Gilbert about this meeting?

20 A. Yes.

21 Q. Okay. Do you recall when that was?

22 A. It was -- I don't recall exactly. It would have been no  
23 later than the day before -- I mean no earlier than the day  
24 before, no later than the morning of.

25 Q. And what do you recall about that conversation?

1     A. I don't recall the specific words that were said, but he  
2 basically just said, "Will you let me know? Someone's  
3 going to be talking about 35th Avenue North Birmingham  
4 stuff. Will you just let me know what they say?"  
5 Something to that effect.

6     Q. Did he say that the person who would be making those  
7 comments was somebody he had asked to go make those  
8 comments?

9     A. No.

10    Q. Do you know if he mentioned Oliver Robinson's name  
11 specifically?

12    A. I don't recall.

13    Q. So the morning of February 20, you went into the office,  
14 and then did you drive down to Montgomery for the meeting?

15    A. Yes.

16    Q. Okay. Did you attend the meeting?

17    A. Yes.

18    Q. Did you hear Oliver Robinson speak?

19    A. I did. Yes.

20    Q. Did Oliver Robinson give any reason at that meeting to  
21 believe that he was actually working or his foundation was  
22 working for Balch and Drummond?

23    A. No.

24    Q. Did he give any reason to think that he was there as a  
25 paid consultant?

1     **A.** No.

2     Q. After that meeting, what did you do next?

3     **A.** I schmoozed for a few minutes and then drove to Balch's  
4 Montgomery office, and then I found an open computer, typed  
5 up my notes.

6     Q. Okay. So why would you go straight from the commission  
7 meeting to Balch's office in Montgomery to type up your  
8 notes?

9     **A.** Because it was important that we get the newsletter that  
10 we always produced from these meetings out that afternoon  
11 because we sent it to clients and colleagues. And we just  
12 wanted to get it out the day of to show that, you know,  
13 we're -- it's a priority and we're covering whatever is  
14 going on in Montgomery.

15    Q. Okay. So you mentioned a newsletter.

16    **A.** Yes.

17    Q. Would Balch prepare and send out to clients a newsletter  
18 after each AEMC meeting?

19    **A.** Yes.

20    Q. Summarizing what happened at the meeting?

21    **A.** Yes.

22    Q. So was it ordinary practice for associates covering the  
23 meeting to go directly to Balch's Montgomery office, type  
24 up their notes, and then get them to the appropriate people  
25 to put into a newsletter format?

1       A. Yes.

2       Q. Do you recall Joel Gilbert reaching out to you to ask  
3       how the meeting went?

4       A. Yes.

5            MR. WARD: Your Honor, may I approach the witness?

6            THE COURT: You may.

7            (Government's Exhibit 71 was referenced.)

8       Q. (BY MR. WARD:) Mr. Simpson, I have handed you a stack  
9       of exhibits. The one on top has been marked for  
10      identification as Government's Exhibit 71. Would you take  
11      a look at that and tell me if you recognize it?

12      A. I do.

13            MR. WARD: Your Honor, the government offers 71.

14            MR. ESSIG: No objection.

15            MR. BOUCHARD: No objection, Your Honor.

16            MR. McKNIGHT: No objection, Your Honor.

17            THE COURT: Thanks, everyone. 71 is received and may  
18      be published.

19            (Government's Exhibit 71 was admitted into evidence.)

20            MR. WARD: Thank you, Your Honor.

21       Q. Let's look at the bottom of the page, the  
22      earliest-in-time email. Mr. Simpson, do you see this email  
23      dated February 20, 2015 from Joel Gilbert to you?

24      A. Yes.

25      Q. And what's the time on that?

1     **A.** 1:22 p.m.

2     **Q.** Okay. So how long after the meeting concluded was this  
3     email sent?

4     **A.** Roughly an hour, hour and a half.

5     **Q.** Okay. And what's the subject?

6     **A.** "How Did Meeting Go?"

7     **Q.** And then if we look at the top of the page to see your  
8     response, 14 minutes later you responded. And can you read  
9     for us the first two lines?

10    **A.** Of my response?

11    **Q.** Of your response, yes.

12    **A.** "It was good. Typing up my notes now for the  
13    *Environmental Update*, but here's my summary of the North  
14    Birmingham portion."

15    **Q.** So the *Environmental Update*, is that the reference to  
16    the newsletter that you were just talking about?

17    **A.** Yes.

18    **Q.** Okay. But in the meantime, you went ahead and sent him  
19    a summary of the North Birmingham portion?

20    **A.** Yes.

21    **Q.** Was that because you knew he was interested in that in  
22    particular?

23    **A.** Yes.

24    **Q.** Was it because of the conversation you had had with him  
25    leading up to the meeting?

1 A. Well, that and the fact that I'd been working with him  
2 on this for six months at the time.

3 Q. Okay. You knew he would have been interested, in any  
4 event?

5 A. Yes.

6 Q. And then the next sentence, what does the next sentence  
7 say?

8 A. "Representative Robinson gave a really good  
9 presentation."

10 Q. Okay. And then you said after that "He touched on the  
11 main concerns that his constituency has with EPA's actions  
12 in North Birmingham (mentioned specifically both  
13 35th Avenue NPL listing and the GASP petition in Tarrant)."  
14 Do you see that?

15 A. Yes.

16 Q. Okay. Now, at the time, did you know that  
17 Representative Robinson was actually communicating with  
18 Joel Gilbert and had been asked by Joel Gilbert to go down  
19 and make this presentation?

20 A. No.

21 Q. Did you know that Representative Robinson had picked up  
22 a \$14,000 check from Joel Gilbert four days before this  
23 meeting?

24 A. No.

25 Q. Okay. Did Joel Gilbert tell you that in response to

1       this?

2       **A.** No.

3       Q. If we go down to the third bullet point from the bottom  
4       that begins "Rep. Robinson" --

5       **A.** Yes.

6       Q. -- can you read that?

7       **A.** "Representative Robinson asked for AEMC/ADEM's help in  
8       determining who is actually responsible for the  
9       contamination and to 'narrow down' the list of responsible  
10      parties. If these other companies are not found to be  
11      responsible, they should be taken off the list" -- I  
12      misspelled "off." That's a tough word -- "taken off the  
13      list of responsible parties and 'removed from the  
14      process.' "

15      Q. Okay. And I see language in quotation marks. Was that  
16      language that you thought was taken directly from  
17      Representative Robinson's comments?

18      **A.** Yes.

19      Q. Okay. And was it significant to you that Representative  
20      Robinson asked for ADEM/AEMC's help in narrowing down the  
21      list of responsible parties?

22      **A.** Was it significant to me?

23      Q. Yeah.

24      **A.** Yes.

25      Q. Okay. Why was it significant?

1       A. Because it could potentially have an effect on what our  
2 client's involvement with that matter was.

3       Q. Okay. And that's because -- was Drummond a potentially  
4 responsible party at this point?

5       A. Yes.

6       Q. And Representative Robinson was asking for their help,  
7 ADEM's and AEMC's help in narrowing down the list of  
8 responsible parties?

9       A. That's what he said.

10      (Government's Exhibit 73 was referenced.)

11      Q. Okay. If you can take a look at the next document  
12 before you which has been marked as Government's  
13 Exhibit 73?

14           MR. WARD: Your Honor, the government offers  
15 Government's Exhibit 73.

16           THE COURT: Any objections?

17           MR. ESSIG: Just a moment, Your Honor.

18           MR. BOUCHARD: No objection, Your Honor.

19           MR. McKNIGHT: No objection.

20           MR. ESSIG: No objection.

21           THE COURT: Thanks, everyone. 73 is received and may  
22 be published.

23      (Government's Exhibit 73 was admitted into evidence.)

24           MR. WARD: Thank you, Your Honor.

25       Q. Let's look at just sort of the top half of the page. So

1 the bottom email on the page, Mr. Simpson, do you recognize  
2 that as the email we just looked at, your email response to  
3 Joel Gilbert summarizing --

4 **A.** Yes.

5 Q. -- Oliver Robinson's comments? Okay. And then do you  
6 see an email at the top that you're not copied on from Joel  
7 Gilbert to Steve McKinney dated the same day at 5:17 p.m.?

8 **A.** Yes.

9 Q. And what did Mr. Gilbert tell Mr. McKinney?

10 **A.** "Summary of AEMC meeting from Tal. Also have the  
11 video."

12 Q. Did you understand that a video had been made of this  
13 meeting?

14 **A.** They record every meeting.

15 Q. Who does?

16 **A.** Alabama Department of Environmental Management.

17 Q. Okay.

18 **A.** Or the AEMC. I don't know. Somebody does.

19 Q. Do you know whether Joel Gilbert had separately paid to  
20 have this meeting recorded?

21 **A.** No.

22 (Government's Exhibit 70 was referenced.)

23 Q. Okay. Let me ask you to look at the next exhibit before  
24 you, which is Exhibit 70, marked for identification as  
25 Exhibit 70. Do you see that?

1       A. I do.

2           MR. WARD: Government offers Exhibit 70.

3           MR. ESSIG: No objection.

4           MR. BOUCHARD: No objection.

5           MR. McKNIGHT: No objection, Your Honor.

6           THE COURT: Thanks, everyone. 70 is received and may  
7 be published.

8           (Government's Exhibit 70 was admitted into evidence.)

9       Q. (BY MR. WARD:) Okay. Mr. Simpson, what is the date on  
10 this email at the top?

11      A. February 23, 2015.

12     Q. Okay. So that's the Monday after the commission meeting  
13 we have been discussing?

14      A. Yes.

15     Q. And Mr. Gilbert emailed you asking you to "download  
16 video to extranet. Link and password is below"?

17      A. Yeah.

18     Q. And then below is a link to video of Representative  
19 Robinson speaking at the meeting?

20      A. Yes.

21     Q. Okay. Did you do that? Did you download the video to  
22 the Balch extranet?

23      A. I don't remember, but I'm sure I did.

24           (Government's Exhibit 74 was referenced.)

25     Q. Okay. If you'll look at the next document before you,

1 which has been marked as 74, do you recognize that email?

2 A. Yes.

3 MR. WARD: Government offers Government's Exhibit 74.

4 MR. BOUCHARD: No objection.

5 MR. ESSIG: No objection.

6 MR. McKNIGHT: No objection, Your Honor.

7 THE COURT: Thanks, everyone. 74 is received and may  
8 be published.

9 (Government's Exhibit 74 was admitted into evidence.)

10 Q. (BY MR. WARD:) All right. Mr. Simpson, this is another  
11 email the same day. And is this an email reflecting that  
12 you added the materials to the extranet site from the  
13 commission meeting?

14 A. Yes.

15 Q. Okay. And that includes a video of Representative  
16 Robinson presenting to AEMC?

17 A. Yes.

18 (Government's Exhibit 72 was referenced.)

19 Q. Can you look at what's before you as Government's  
20 Exhibit 72?

21 MR. WARD: The government offers Government's  
22 Exhibit 72.

23 MR. ESSIG: No objection.

24 MR. McKNIGHT: No objection.

25 MR. BOUCHARD: No objection, Your Honor.

1           THE COURT: Thank you, all. 72 is received and may be  
2 published.

3           (Government's Exhibit 72 was admitted into evidence.)

4           Q. (BY MR. WARD:) Mr. Simpson, take a look at this  
5 document and tell me what it is.

6           A. It appears to be a very fine written *Environmental*  
7 *Update*, February 2015.

8           Q. Is this the newsletter that you referred to, a copy of  
9 the newsletter that was prepared regarding the February 20,  
10 2015 meeting?

11          A. Yes.

12          Q. Okay. Did you have a hand in drafting this?

13          A. I did.

14          Q. Who did Balch send this newsletter out to?

15          A. I couldn't tell you exactly, but generally clients,  
16 colleagues, probably others around the firm.

17          Q. Let's go to page 2, the bottom part of the page under  
18 the heading "Public Comments." Mr. Simpson, do you  
19 recognize these as your words?

20          A. Yes.

21          Q. Okay. Let's look at the top bullet point regarding  
22 Representative Robinson. Can you read the first sentence  
23 there?

24          A. Well, under "Public Comments," it says "The commission  
25 unanimously approved two requests for public comments, and

1 presentations from two commenters were heard."

2 Q. And then the next sentence?

3 A. "First, Alabama Representative Oliver Robinson, 58th  
4 District, spoke on matters related to EPA's proposed  
5 listing on the National Priorities List (NPL) of the  
6 35th Avenue site in North Birmingham under Superfund as  
7 well as EPA's decision to grant a request for preliminary  
8 assessment to determine whether the area should be  
9 considered for NPL listing."

10 Q. Thank you. So you refer to the speaker as Alabama  
11 Representative Oliver Robinson.

12 A. Yes.

13 Q. Did you understand Representative Robinson to be at that  
14 commission meeting in that capacity?

15 A. Generally, yes.

16 Q. Okay. Your next sentence states "Representative  
17 Robinson represents the areas in North Birmingham that are  
18 directly involved in these matters."

19 A. Yes.

20 Q. Does this say anything about Oliver Robinson serving as  
21 a consultant to Balch or Drummond?

22 A. No.

23 Q. Did you know that at the time?

24 A. No.

25 Q. Did anybody tell you that?

1     **A.** I don't believe so.

2     **Q.** Did you, Mr. Simpson, continue working on Drummond  
3       matters throughout 2015 and into 2016?

4     **A.** Yes.

5     **Q.** Okay. At some point later in 2015, did you learn of an  
6       organization called Get Smart Tarrant?

7     **A.** Yes.

8     **Q.** What did you understand that to be?

9     **A.** A public outreach organization and effort to speak to  
10      the public about all the different -- you know, the EPA  
11      matter in North Birmingham and all the issues surrounding  
12      it.

13    **Q.** Did you know who was involved?

14    **A.** Generally, yes.

15    **Q.** Who did you know to be involved?

16    **A.** Well, I knew they were coordinating with our effort.

17    **Q.** With Balch?

18    **A.** Yes.

19    **Q.** Did you know of any connection between it and Oliver  
20      Robinson or the Oliver Robinson Foundation?

21    **A.** I don't think I did. I don't recall knowing that, no.

22    **Q.** Okay. Do you recall ever learning -- during 2014, '15,  
23      '16, do you recall ever learning that Balch signed a  
24      contract in February 2015 with a foundation that Oliver  
25      Robinson controlled?

1       A. No.

2       Q. When did you first learn about that contract?

3       A. When the -- when al.com blasted it out there for the  
4 world to see.

5            MR. WARD: No further questions, Your Honor.

6            THE COURT: Cross-exam?

7            MR. ESSIG: Yes, Your Honor. Just a moment.

8       CROSS-EXAMINATION BY MR. ESSIG:

9       Q. Good morning, Mr. Simpson. How are you?

10      A. Doing well.

11      Q. My name is Brandon Essig, and I'm one of the attorneys  
12 that represents Joel Gilbert in this case. I've got just a  
13 few follow-up questions for you.

14      A. Sure.

15      Q. Now, Mr. Simpson, you left Balch & Bingham, if I  
16 understand correctly from your notes, in 2017; is that  
17 right?

18      A. It was about a week or two into 2017, right.

19      Q. All right. So you spent about six or seven years at  
20 Balch; is that right?

21      A. In total, I spent -- because I did a summer clerkship  
22 and then through law school I worked part-time, so in total  
23 more like eight years.

24      Q. Okay.

25      A. Full-time about six years.

1 Q. And through that time, did you spend most of your time  
2 working in the environmental section?

3 A. Yes.

4 Q. And I suppose then in the entire time you worked in the  
5 environmental section that Joel Gilbert was someone who  
6 worked there as well?

7 A. Yes.

8 Q. So you got to know Joel Gilbert fairly well in your time  
9 there?

10 A. Yes.

11 Q. And is he someone you worked under quite a bit?

12 A. Yes.

13 Q. Now, Mr. Simpson, what I want to talk about is getting a  
14 little bit of a sense of how the environmental section at  
15 Balch is set up. I mean, Balch is a very large law firm;  
16 would that be fair to say?

17 A. Yes.

18 Q. And the environmental section itself is one of the  
19 larger sections at the firm; is that right?

20 A. Yes.

21 Q. And would it be fair to say that Balch & Bingham, one of  
22 the core areas where it holds itself out as having a lot of  
23 expertise is in the environmental area? Is that right?

24 A. Yes.

25 Q. And is it important to the firm or did you gather it is

1 important to the firm that they had some of their most  
2 experienced and knowledgeable attorneys working in that  
3 section and in that area?

4 A. That's fair to say.

5 Q. And would it be fair to say that in that section  
6 probably, as is the case with the firm at large, there  
7 there's a certain hierarchy that exists within the firm?  
8 Is that right?

9 A. Yes.

10 Q. I mean, there's a senior partner that leads any  
11 particular practice area or section; is that right?

12 A. Yes.

13 Q. And the environmental section had a senior partner that  
14 led that section; is that right?

15 A. We did.

16 Q. And when you were there, was that Steve McKinney?

17 A. Yes.

18 Q. And if I recall correctly, too, there was another more  
19 senior partner at Balch & Bingham that worked in the  
20 Atlanta office in the environmental section named David  
21 Moore; is that right?

22 A. Yes.

23 Q. And early in the days of the Drummond work, the primary  
24 sort of senior partners working on that or the most senior  
25 parties working on that matter were David Moore and Steve

1 McKinney; would that be fair to say?

2 A. I would say so, yes.

3 Q. And as that work evolved, as the Drummond work evolved  
4 in North Birmingham, over time Joel Gilbert's role as one  
5 of the more senior people became more pronounced; is that  
6 right?

7 A. Yes.

8 Q. And would it be fair to say, Mr. Simpson, that during  
9 the time that y'all worked on the Drummond matters, that  
10 there were over a dozen attorneys at Balch that worked on  
11 that?

12 A. Yes. Probably.

13 Q. And there was -- you've been asked today about the 35th  
14 Avenue Superfund Site; is that correct?

15 A. Yes.

16 Q. And you have been asked about the GASP petition as well;  
17 is that right?

18 A. Yes.

19 Q. Okay. But there was also some Title V air permit  
20 litigation that the same group of people were working on  
21 for Drummond; is that right?

22 A. Yes.

23 Q. And there's a NESHAP compliance matter that y'all were  
24 working on as well?

25 A. Yes.

1 Q. And did you do some work on all those matters?

2 A. Yes.

3 Q. And were you generally aware of those four matters that  
4 y'all were working on for Drummond?

5 A. Generally, yes.

6 Q. Again, as time went by and as it progressed and as  
7 Mr. Gilbert became more active in the litigation, would it  
8 be fair to say that Mr. Gilbert was the partner that was  
9 reviewing most of the work that the associates were doing?

10 A. That was my understanding.

11 Q. So in your case, for the work that you did, if you did  
12 some research, created a memo, wrote up some talking points  
13 kind of like what we've seen here today, Mr. Gilbert would  
14 be the person you would submit those matters to for him to  
15 review?

16 A. Generally, but I would just make sure that he was in the  
17 loop on everything.

18 Q. Okay.

19 A. I mean, sometimes I did work more directly for someone  
20 else, but, yes, I'd say Joel was -- anything I did, I  
21 wanted to, you know, make sure he was up to date on, yes.

22 Q. Okay. And did you perceive that Mr. Gilbert occupied a  
23 similar position for the other associates that were working  
24 on this matter?

25 A. Yes.

1 Q. He was sort of the primary person managing the  
2 day-to-day work of all of the associates; is that right?

3 A. Yes.

4 Q. And of the dozen or so lawyers at Balch that were  
5 working on this, the partners -- again, as I understand,  
6 David Moore at some time left the firm; is that right?

7 A. Yes.

8 Q. But when we get into 2014, 2015, the period of time  
9 we're talking about here today, the partners on the matter  
10 were Steve McKinney, Joel Gilbert, and Mary Samuels; is  
11 that right?

12 A. Sounds about right.

13 Q. And below that would be the associates whose work they  
14 were managing?

15 A. Yes.

16 Q. In your involvement in a project like this that has this  
17 many different aspects to it and this many number of  
18 attorneys, is there anything unusual at all about you not  
19 being aware of certain things that are going on?

20 A. No.

21 Q. And is there anything unusual at all about maybe you  
22 working on an aspect of the matter, but you don't know  
23 exactly what the partners are doing or what their next  
24 steps are going to be?

25 A. No, it's pretty normal.

1 Q. Now, the work that you did, Mr. Simpson, I think you  
2 said one of the main things you did is you worked with  
3 public records requests to the EPA and to the state; is  
4 that right?

5 A. Yes.

6 Q. And which one of those entities did you spend the most  
7 time on working public document requests?

8 A. The EPA.

9 Q. Okay. And why was most of your time spent working on  
10 the EPA FOIA requests?

11 A. There were a lot of documents involved, and it was -- it  
12 was a more complex than normal FOIA request, FOIA matter.

13 Q. Okay. And why is that?

14 A. Because there were such a voluminous number of  
15 documents, for one. And, two, there were so many other  
16 interested people, that they received so many requests.  
17 And, I mean, I can't speak for them, but they handled it  
18 differently than any other records request that I have been  
19 a part of.

20 Q. EPA did?

21 A. EPA did, yes.

22 Q. And were they withholding a lot of documents that were  
23 being requested pursuant --

24 MR. WARD: Objection to relevance.

25 THE COURT: Sustained.

1           MR. ESSIG: Judge, they talked about it on direct  
2 examination.

3           THE COURT: I think you've countered it already.

4           MR. ESSIG: Okay.

5           Q. Mr. Tal -- Mr. Simpson, excuse me. I apologize.

6           A. That's all right.

7           Q. What I want to do is I want to go through and I just  
8 want to ask you about some of the things you did, some of  
9 the tasks that you did on this matter. Just tell me if I'm  
10 correct or not.

11          A. Okay.

12          Q. You did some research for Mr. Gilbert on ABC Coke's  
13 compliance history; is that right?

14          A. Yes.

15          Q. You helped him draft a resolution for the City of  
16 Tarrant; is that correct?

17          A. Yes.

18          Q. You helped him draft a resolution for the Jefferson  
19 County Commission; is that right?

20          A. Yes.

21          Q. And we've already talked about you coordinated FOIA  
22 responses to the EPA or with the EPA; is that right?

23          A. Yes.

24          Q. You reviewed and analyzed EPA's hazard ranking score  
25 documentation; is that correct?

1     A. That's right.

2     Q. And, again, hazard ranking score, I think the jury has  
3     heard the acronym HRS?

4     A. Yes.

5     Q. And that's a document where the EPA goes out, does  
6     tests, gets back scientific results, and there's sort of an  
7     objective data point that you consider?

8     A. Supposed to be, yes.

9     Q. And then also as a part of that, you worked with the  
10    consultants at SE+C on those EPA pollution reports; is that  
11    right?

12    A. Yes.

13    Q. As part of your FOIA work in reviewing FOIA requests  
14    from the EPA, you reviewed some EPA communications with the  
15    law firm of Hare Wynn; is that right?

16    A. Yes.

17    Q. Hare Wynn is a plaintiff's firm?

18    A. Yes.

19            MR. WARD: Objection. Relevance.

20            THE COURT: Sustained.

21    Q. (BY MR. ESSIG:) One of the other things you did,  
22    Mr. Simpson, is you reviewed from the FOIA requests some  
23    EPA communications with plaintiffs' firms and residents out  
24    there in the community; is that right?

25    A. Yes.

1 Q. And you reviewed EPA's communications with both  
2 residents and plaintiffs' firms; is that right?

3 A. Yes.

4 Q. You reviewed and summarized EPA waivers that they  
5 obtained to sample people's soil?

6 A. Yes.

7 Q. Is that correct?

8 MR. WARD: Objection. Relevance.

9 A. Yes.

10 THE COURT: I think you've covered what he did as a  
11 lawyer, so just wrap this up quickly, please.

12 Q. (BY MR. ESSIG:) And, Mr. Simpson, in the time that you  
13 were there, Mr. Ward had asked you about Get Smart. And  
14 that was a group that you became aware of at some point in  
15 time; is that correct?

16 A. Yes.

17 Q. And one of the things -- as a matter of fact, at some  
18 point in time, you prepared -- let me ask you this question  
19 first: You reviewed some surveys from the Tarrant  
20 community that had been compiled by Get Smart; is that  
21 correct?

22 A. Yes.

23 Q. And based on your review of those surveys, one of your  
24 tasks was to draft affidavits or comments for those members  
25 of those communities to sign?

1 A. Correct.

2 Q. Is that right?

3 A. Yes.

4 Q. Now, Mr. Simpson, I want to go and talk about your  
5 attendance at the AEMC meeting. And just so we're clear,  
6 when you go to the AEMC meeting, that is a public meeting;  
7 is that right?

8 A. Yes.

9 Q. And that is a meeting, I think as you stated, that  
10 someone from Balch & Bingham attends every single month.

11 A. Correct. Or every meeting. I don't know if they're  
12 held every month.

13 Q. Right, right. I'm sorry. I think it's every other  
14 month is when they meet.

15 A. Every meeting, yes.

16 Q. And Balch & Bingham is not the only party that attends  
17 those meetings; would that be fair to say?

18 A. Yes.

19 Q. I mean, there are others that are typically in  
20 attendance at those meetings; is that right?

21 A. It's usually a pretty full room.

22 Q. And usually in addition to Balch & Bingham, who  
23 represents a lot of industrial clients, very common for  
24 people from environmental groups to be there as well; is  
25 that right?

1       A. Yes.

2       Q. As a matter of fact, there was an individual from an  
3       environmental group that spoke the same day that  
4       Representative Robinson spoke; is that right?

5       A. Correct.

6            MR. ESSIG: Sam, could you pull up Government's  
7       Exhibit 68, please? If you'd go to page 2, Sam. And if  
8       you would actually just highlight the top portion.

9       Q. All right. And, Mr. Simpson, what we're looking at here  
10      is this is the actual sort of agenda. This is the business  
11      that the AEMC conducted on this particular meeting; is that  
12      right?

13       A. Yes.

14       Q. And so the first thing they did is they considered  
15      minutes from the previous meeting; is that right?

16       A. Yes.

17       Q. They got a report from the ADEM director. That's  
18      Mr. LeFleur?

19       A. Yes.

20       Q. The way that would have worked is he would have stood up  
21      at the podium and spoken to the commission?

22       A. Yes.

23       Q. Report from the commission chair?

24       A. Yes.

25       Q. And report from the rulemaking committee. Is that

1 right?

2 A. Yep.

3 Q. And if we look here there on arrow number 5, the one  
4 matter, that one sort of regulatory matter that the  
5 commission was considering was this consideration of  
6 adoption of proposed amendments to ADEM's administrative  
7 code; is that right?

8 A. Yes.

9 Q. And if you'll go down and read the sentence where it  
10 begins with "this proposed rulemaking."

11 A. "This proposed rulemaking would incorporate revisions  
12 made by EPA in its federal hazardous waste regulations to  
13 address the management of solvent-contaminated wipes as  
14 well as other routine updates and rules maintenance."

15 Q. So this was the only regulatory or rulemaking issue  
16 before the AEMC on the day that Oliver Robinson spoke; is  
17 that right?

18 A. Yes.

19 Q. And then I think the next one, number 6, is there was an  
20 appeal issue by Marshall Durbin companies; is that right?

21 A. Yes.

22 Q. And again, that was the only appeal matter that the AEMC  
23 was considering on that particular day; is that correct?

24 A. Yes.

25 MR. ESSIG: Just a moment, Your Honor.

1           Sam, if you'd bring up Government's Exhibit 72, please.  
2       And Sam, if you'll go to the second page. And if you'll  
3       highlight the public comments section or enlarge that,  
4       please.

5       Q. Again, Mr. Simpson, as you testified on direct  
6       examination, this is what is a very well-written summary of  
7       what occurred at the AEMC --

8       A. Thank you.

9       Q. -- that you went to; is that correct?

10      A. Yes.

11      Q. And in the public comment period, you summarize the two  
12       speeches by the individuals that spoke that day.

13      A. Yes.

14      Q. And one of those we've already discovered is Oliver  
15       Robinson; is that correct?

16      A. Yes.

17      Q. And then after that is Mr. Mitch Reid, who is the  
18       program director of the Alabama Rivers Alliance.

19      A. Yes.

20      Q. Is that correct?

21      A. Yes.

22      Q. Are you familiar with the Alabama Rivers Alliance?

23      A. I am.

24      Q. What type of organization is that?

25      A. Environmental organization. Environmental advocacy.

1 Q. Okay. And if you'll read the last sentence there  
2 beginning with "Mr. Reid." There we go.

3 A. "Mr. Reid further urged the commission and department to  
4 be prepared to act on incorporating the new EPA rules and  
5 the state regulations and offered to assist the department  
6 in developing its policy in this area."

7 Q. Okay. So specifically, Mr. Reid asked ADEM to take a  
8 position on those regulations; is that correct?

9 A. Yes.

10 Q. And offered to actually assist them with making those  
11 regulations; is that right?

12 A. Yes.

13 Q. And just so we're clear for the jury, the regulations  
14 that he was talking about were coal ash regulations?

15 A. Correct.

16 Q. And you would know, Mr. Simpson, from your experience  
17 working in the environmental section at Balch that coal ash  
18 regulations are regulations that would apply to industry in  
19 coal companies; is that right?

20 A. Yes.

21 MR. ESSIG: All right. Sam, if you could bring up  
22 Government's Exhibit 71, please.

23 Q. Now, Mr. Simpson --

24 MR. ESSIG: Sam, if you could highlight sort of the top  
25 through about the first three bullet points.

1 Q. Now, Mr. Simpson, you reported back on Oliver Robinson's  
2 speech before the commission that day to Mr. Gilbert; is  
3 that right?

4 A. Yes.

5 Q. All right. And if we can go to the first sentence there  
6 of the first bullet point beginning with "he has  
7 researched."

8 MR. ESSIG: Can you highlight that for us, please?

9 Q. If you'll read that for us, Mr. Simpson.

10 A. "He has researched the relevant issues thoroughly once  
11 he started receiving a lot of comments of concern from his  
12 constituents, the residents in that area."

13 Q. Now, Mr. Simpson, you were asked a number of questions  
14 by Mr. Ward about things you may or may not have known at  
15 this time. At this point in time, did you know that Oliver  
16 Robinson's foundation had entered into a contract with  
17 Balch & Bingham to do community engagement in North  
18 Birmingham and Tarrant?

19 A. No.

20 Q. And did you know at this particular time that as of  
21 January of 2015, that Mr. Robinson and his organization had  
22 been provided with 93 letters from the community regarding  
23 their concerns in North Birmingham? Were you aware of that  
24 fact?

25 A. No.

1 Q. And were you aware of the fact prior to this that  
2 Mr. Robinson had represented in December of 2014 to  
3 Mr. Gilbert that his organization was going to be doing  
4 mail-outs?

5 A. No.

6 Q. Were you aware that he had represented they were going  
7 to be doing robocalls in the community?

8 A. No.

9 Q. Now, if you'll read the next sentence for us too,  
10 please.

11 A. "He has met with EPA, and he has met with GASP."

12 Q. So that day at the AEMC appearance, you heard him tell  
13 the members of the AEMC that he had actually met with EPA  
14 and GASP on this particular matter?

15 A. Yes.

16 Q. Is that right? Now, Mr. Simpson, at this point in time  
17 you stated that you had worked on this matter at Balch &  
18 Bingham under Joel Gilbert's supervision for about six  
19 months; is that right?

20 A. Give or take. That's probably about right, yeah.

21 Q. And at this point in time you had done quite a bit of  
22 research on the 35th Avenue matter; would that be fair to  
23 say?

24 A. Yes.

25 Q. And you had had quite a bit of involvement in the issue

1 of whether or not this site would be added to the NPL;  
2 would that be fair to say?

3 A. Yes.

4 Q. Based on the research you had done -- let me ask you:  
5 Did that research include just reviewing Balch and Drummond  
6 documents, or did it also include reviewing information  
7 from the EPA?

8 A. It included reading information from the EPA as well.

9 Q. And information from ADEM and other state agencies?

10 A. Yes.

11 Q. And was Mr. Robinson's comments at the AEMC and your  
12 summary of them consistent with what you had learned in  
13 your six months of work on this matter?

14 MR. WARD: Objection. Relevance.

15 A. Yes.

16 THE COURT: How much longer do you have with this  
17 witness?

18 MR. ESSIG: I've got a little bit, Your Honor, but not  
19 that much, probably -- I would estimate 10 to 15 minutes.

20 THE COURT: Okay. Ladies and gentlemen of the jury,  
21 let me interrupt Mr. Essig here, please, and give you your  
22 morning break. Please do not talk about this case at all  
23 during the break. And if you leave the jury room, in the  
24 unlikely event anyone approaches you about this case,  
25 please let me know. We are in recess until 10:33, so

1 roughly 15 minutes from now. Thank you.

2 (The following proceedings were had in open court  
3 outside of the presence and hearing of the jury.)

4 THE COURT: You are free to get off the witness stand.  
5 You cannot talk to anyone during the break about your  
6 testimony. Thank you. 15 minutes, everyone. Thanks.

7 (Recess.)

8 (The following proceedings were had in open court in the  
9 presence and hearing of the jury.)

10 THE COURT: Mr. Essig, you may continue with your  
11 examination.

12 MR. ESSIG: Thank you, Your Honor.

13 Q. Mr. Simpson, I want to go back and talk a little bit  
14 about Government's Exhibit 72. We won't pull it up on the  
15 screen, but that is the *Environmental Update* done at Balch.

16 This is not a document that was created solely for the  
17 February 2015 AEMC appearance; is that right? I mean this  
18 document in general. Y'all do one of these -- the firm  
19 does these periodically --

20 A. Yes.

21 Q. -- is that right? So, I mean, it's not like you only  
22 created this because of the Oliver Robinson appearance in  
23 2015.

24 A. Correct. We do one after every meeting.

25 Q. And this gets sent out to clients; is that right?

1     **A.** Yes.

2     Q. And does get it sent and posted on your -- on Balch's  
3     website?

4     **A.** Yes.

5     Q. So it's there; it's public information; anybody that  
6     wants to come to your website and look at it could look at  
7     it?

8     **A.** Yes.

9     Q. As a matter of fact, the time that the associates at  
10    Balch & Bingham spend going to the bimonthly AEMC meetings  
11    and creating the *Environmental Update*, that's time that's  
12    not billed to a client; is that right?

13    **A.** Correct. It's billed to the firm.

14    Q. So it's basically a free service for anyone who might be  
15    interested in it?

16    **A.** Yes.

17    Q. Mr. Simpson, what I do want to talk about and show  
18    you --

19            MR. ESSIG: Sam, if you can pull up Government's  
20    Exhibit 74.

21    Q. And, Mr. Simpson, again, you were asked about this on  
22    direct examination, an email from you to Joel Gilbert; is  
23    that right?

24    **A.** Yes.

25    Q. And this references information that you were adding to

1 the extranet site.

2 A. Yes.

3 Q. Can you tell us what the extranet site is?

4 A. Basically, a web repository of documents that had the  
5 ability to let clients also log in from out of the  
6 network --

7 Q. Okay.

8 A. -- if we needed to share documents with client. It was  
9 also just kind of an organizational tool for us if we had a  
10 lot of documents to deal with in a matter, a place where we  
11 could organize them.

12 Q. All right. I think here in the second paragraph it says  
13 "I placed these materials in a new subfolder under the  
14 general link from the ABC site, then click on media"; is  
15 that right?

16 A. Yes.

17 Q. And media, we're not referring to news coverage. We're  
18 referring to files, digital files of the video and audio  
19 for these particular things; is that right?

20 A. Yes.

21 Q. And the extranet site -- and, again, that's a site that  
22 any of the dozens of attorneys working on this matter would  
23 have access to; is that right?

24 A. Yes.

25 Q. And if you're working on this matter and you're given

1 access to the extranet site, you can go and look at  
2 anything you want to on that extranet site; is that  
3 correct?

4 A. Yes.

5 Q. And this would also be -- you said it's shared with  
6 clients. This would be something, a file or a filing  
7 system that ABC Coke and Drummond would have been given  
8 access to as well; is that right?

9 A. Most likely, yes.

10 Q. So if it's placed on the extranet site, it's placed in  
11 plain sight, so to speak; is that right?

12 A. Yes.

13 Q. Now, Mr. Simpson, we've mentioned before that you worked  
14 at Balch & Bingham for eight-plus years; is that right?

15 A. Yes.

16 Q. And you stated in that time you worked with Joel Gilbert  
17 and for Joel Gilbert quite a bit; is that right?

18 A. Yes.

19 Q. And in that time, you developed an appreciation of Joel  
20 as a person?

21 A. Yes.

22 Q. And you trusted Joel?

23 A. Yes.

24 Q. And you found Joel to be a truthful and law-abiding  
25 person?

1 A. Yes.

2 MR. ESSIG: Thank you. No further questions.

3 THE COURT: Who's next?

4 Mr. McKnight.

5 CROSS-EXAMINATION BY MR. McKNIGHT:

6 Q. Mr. Simpson, I'm David McKnight. I represent Steve  
7 McKinney in this matter. Now, the environmental section  
8 where you worked at Balch had 20-something lawyers in it,  
9 correct?

10 A. Yes.

11 Q. And approximately half of those were partners, correct?

12 A. Yes.

13 Q. All right. And you did work for most all those folks,  
14 right?

15 A. Yes.

16 Q. And those attorneys all had their own individual clients  
17 in addition, correct?

18 A. Yes.

19 Q. I mean, Drummond wasn't the only client the  
20 environmental section had, correct?

21 A. Far from it.

22 Q. Okay. Y'all had tens -- hundred or so additional  
23 clients, correct?

24 A. Lots, yes.

25 Q. Lots of clients?

1     **A.** Yes.

2     Q. And work is being done for all those clients, and all  
3     those clients have separate matters too. Well, not all of  
4     them, but some of them have separate matters. Like the  
5     Drummond Company we've seen had four or five different  
6     matters y'all were working on, right?

7     **A.** Yes.

8     Q. So you've got hundreds -- a hundred or so clients with  
9     multiple matters for all those. You have offices across  
10    the southeast in addition too, correct?

11    **A.** Yes.

12    Q. Okay. And offices in Atlanta with environmental folks?

13    **A.** Yes.

14    Q. Montgomery?

15    **A.** Yes.

16    Q. Jackson?

17    **A.** Yes.

18    Q. Gulfport?

19    **A.** Yes.

20    Q. Okay. And so as section head, Mr. McKinney visits all  
21    those offices, correct?

22    **A.** He did.

23    Q. Okay. As a matter of fact, he visited you one time when  
24    he was over in Atlanta when you were thinking about law  
25    school, correct?

1       A. He did.

2       Q. And he advised you, regretfully or not, to enter the  
3 profession of law, correct?

4       A. Yes.

5       Q. Okay. And you trusted his advice and you valued it,  
6 correct?

7       A. I did.

8                   MR. McKNIGHT: That's all I have, Your Honor.

9                   THE COURT: Thank you, Mr. McKnight.

10          Mr. Bouchard?

11          MR. BOUCHARD: Yes, Your Honor.

12          CROSS-EXAMINATION BY MR. BOUCHARD:

13        Q. Good morning, Mr. Simpson. My name is David Bouchard,  
14 and I'm an attorney for David Roberson.

15        A. Good morning.

16        Q. I think you said previously that Balch & Bingham has a  
17 great reputation as one of the top law firms in the state  
18 of Alabama; is that right?

19        A. Yes.

20        Q. And specifically the environmental law section, the  
21 section that you worked in, was considered to be a premiere  
22 environmental law section in the whole state of Alabama?

23        A. Yes.

24        Q. That was true at the time that Drummond hired Balch &  
25 Bingham; isn't that right?

1     **A.** Yes. It was true at the time that I decided to take  
2     that job offer, yes.

3     **Q.** And my colleague I think walked you through very well  
4     the many different aspects of your work for Drummond.

5     **A.** Yes.

6     **Q.** Is it fair to say that you did a lot of different work  
7     for Drummond?

8     **A.** I did.

9     **Q.** Would you agree with me or would you have any reason to  
10 dispute that you worked around 700 hours for Drummond?

11    **A.** I believe that.

12    **Q.** Your work ranged the gamut in terms of the different  
13 subject matters and topics that it addressed, right?

14    **A.** Yes.

15    **Q.** And I think it's clear, but just to underline this  
16 point, you were not the only attorney at Balch & Bingham  
17 working on Drummond matters, right?

18    **A.** Correct.

19    **Q.** There were many attorneys?

20    **A.** Yes.

21    **Q.** And many of those attorneys were also working hundreds  
22 of hours for Drummond; is that right?

23    **A.** Yes.

24    **Q.** In all the 700 hours that you worked for Drummond,  
25 Mr. Simpson, you never once met my client, David Roberson;

1 is that right?

2 A. Correct, I did not.

3 Q. You never once talked to him on the phone?

4 A. No.

5 Q. Never once exchanged emails with him; is that right?

6 A. No. Yes, that's right. No, I did not.

7 Q. So if I'm understanding this, then, the matter that  
8 Balch or the matters that Balch & Bingham were representing  
9 Drummond -- was representing Drummond on were complicated  
10 and they were multifaceted and they were numerous; is that  
11 fair?

12 A. Yes.

13 Q. I want to talk to you briefly about an attorney's duties  
14 to their client. You took the bar exam and you're barred  
15 in the state of Alabama, right?

16 A. Yes, and Georgia.

17 Q. And in Georgia. And you've practiced, as you've said,  
18 for almost eight years; is that right?

19 A. 2011 is when I became a member of the Georgia bar, so  
20 seven, seven years now. Yeah.

21 Q. Without getting into the details of boring the jury with  
22 an attorney's duties to their client, you generally agree  
23 with me that an attorney owes duties to their client,  
24 right?

25 A. Yes.

1 Q. And one of those duties is to advise the client  
2 accurately of the law, fair?

3 A. Yes.

4 Q. And to ensure that if the client is ever going off the  
5 road and engaging in conduct that's improper in the mind of  
6 the attorney, that the attorney notify the client they  
7 think there's a problem?

8 A. Yes.

9 Q. You said in your direct examination, I believe, that you  
10 were a staff attorney at Balch & Bingham, right?

11 A. Yes.

12 Q. But you agree with me that even as a staff attorney,  
13 even if, you know, there are senior partners above you and  
14 partners above you, as a staff attorney, you still  
15 personally owe a duty to your client; is that fair?

16 A. Yes.

17 Q. In other words --

18 A. As a member of the bar, whether or not you're --  
19 whatever your title is, as a member of the bar, you are.

20 Q. And so you individually, Mr. Simpson, if you had ever  
21 observed any conduct as an attorney that you thought was  
22 improper, impermissible, or unlawful for some reason, you  
23 had a duty, did you not, to notify either one of your  
24 supervising attorneys or the bar association itself of what  
25 you had seen; is that fair?

1     A. Yes.

2     Q. And is it true that you never did that because you never  
3     felt the need to do that?

4     A. Yes, that's true.

5     Q. So to put that in different words, you never saw any  
6     conduct occur in Balch's representation of Drummond that  
7     you thought was improper, impermissible, or unlawful for  
8     any reason?

9     A. That's correct.

10    Q. I want to ask you some additional questions about the  
11    AEMC meeting on February 20, 2015 --

12    A. Okay.

13    Q. -- where Oliver Robinson spoke. You don't have any  
14    special insight into why Oliver Robinson was there that  
15    day, right?

16    A. I do not, no.

17    Q. You don't have any direct, firsthand knowledge from any  
18    conversations you ever had with Oliver Robinson about why  
19    he was there, right?

20    A. I've never had a conversation with Oliver Robinson.

21    Q. So you don't know what was in his heart or in his mind  
22    when he was talking that day?

23    A. No.

24    Q. Mr. Ward asked you some questions about things that you  
25    knew or didn't know about Oliver Robinson and the contract

1 between his foundation and Balch & Bingham for community  
2 outreach. Do you recall that?

3 A. Yes.

4 Q. And I want to ask you some questions along those lines.

5 A. Okay.

6 Q. You weren't aware, were you, that Oliver Robinson and  
7 John Powe had an agreement to try to become millionaires  
8 through pursuing a role of administrators of a Superfund  
9 settlement?

10 A. No.

11 Q. You were not aware of that?

12 A. Not aware.

13 Q. And you were not aware that they had this goal of  
14 becoming millionaires as of the AEMC meeting in  
15 February 2015?

16 A. Not aware.

17 Q. When you heard Oliver Robinson's presentation, you  
18 didn't have any indication or you didn't have any reason to  
19 believe that he didn't personally believe what he was  
20 saying?

21 A. No.

22 Q. You never heard anybody at Balch & Bingham say Oliver  
23 Robinson's only saying what we asked him to say or  
24 something like that?

25 A. No.

1 Q. In fact, if I heard you correctly in direct examination,  
2 you actually said that Joel Gilbert asked you to let him  
3 know what Oliver Robinson said.

4 A. Yes.

5 Q. In other words, he was asking you?

6 A. Yes.

7 Q. The substance of Oliver Robinson's comments,  
8 Mr. Simpson, you would agree with me that the substance of  
9 his comments was consistent with the position that had been  
10 taken by numerous politicians across the state of Alabama?

11 A. I'd agree with that.

12 Q. Including senators, congresspeople, the attorney  
13 general, the governor; is that right?

14 A. Yes.

15 Q. And the substance of Oliver Robinson's comments was also  
16 consistent with Director Lance LeFleur's previously  
17 announced position on behalf of ADEM?

18 A. Yes.

19 Q. You knew, did you not, that prior to 2/2015 when Oliver  
20 Robinson spoke to the AEMC that Director LeFleur had taken  
21 a firm position on behalf of ADEM that ADEM did not concur  
22 in the proposed NPL listing?

23 A. I recall that letter that he wrote, yeah.

24 Q. And as of February 20, 2015, it was your understanding  
25 that ADEM was not concurring and had not deviated from

1 that; is that right?

2 A. That's correct.

3 Q. To be clear, Oliver Robinson never said "ABC Coke" or  
4 "Drummond" in his presentation, did he?

5 A. No, he never did.

6 MR. BOUCHARD: Sam, if you could please pull up  
7 Government's Exhibit 71. And Sam, if you can please  
8 highlight the third-from-the-bottom bullet point that  
9 starts "Rep. Robinson asked."

10 Q. Mr. Ward asked you some questions about part of this  
11 bullet point. I want to ask you questions about the other  
12 part.

13 A. Okay.

14 Q. It says "Rep. Robinson asked for AEMC/ADEM's help in  
15 determining who is actually responsible for the  
16 contamination," right?

17 A. Yes.

18 Q. If I'm understanding what you said there, he did not  
19 say, "Find that ABC Coke or Drummond are not responsible"?

20 A. He did not say that.

21 Q. So is it fair to say that what he said was please  
22 determine who is responsible?

23 A. Yes.

24 MR. BOUCHARD: And if you go to the second sentence,  
25 Sam, and highlight as I read, please.

1 Q. "If these other companies are not found to be  
2 responsible, they should be taken off the list of  
3 responsible parties." Did I read that correctly?

4 A. Yes.

5 Q. So if we flip that sentence and read it in a positive,  
6 if these other companies are found to be responsible, they  
7 should remain on the list of responsible parties; is that  
8 fair?

9 MR. WARD: Objection. Mischaracterizes --

10 THE COURT: Sustained.

11 A. It's logical to me.

12 THE COURT: Sustained.

13 Q. (BY MR. BOUCHARD:) Was it your understanding that  
14 that's what he meant --

15 MR. WARD: Objection.

16 Q. (BY MR. BOUCHARD:) -- either they're responsible or not  
17 and they should stay on the list or they shouldn't?

18 MR. WARD: Objection. Speaks for itself.

19 MR. BOUCHARD: Your Honor, he asked questions about the  
20 document.

21 THE COURT: You can answer that question.

22 A. Generally, yes.

23 Q. (BY MR. BOUCHARD:) Is there any part of what I just  
24 said that you don't think is true?

25 A. No.

1 Q. I want to ask you in closing, Mr. Simpson, just a few  
2 questions about community outreach. You said that you were  
3 not aware that the Oliver Robinson Foundation was engaging  
4 in community outreach on behalf of Balch & Bingham; is that  
5 right?

6 A. Yes.

7 Q. But you also said in response to some questions from  
8 Mr. Essig that there's a hierarchy in a law firm and that  
9 you didn't know everything at all times that everybody in  
10 the law firm was working on.

11 A. Correct.

12 Q. And there's nothing suspicious or unlawful or anything  
13 else about that, right?

14 A. Correct.

15 Q. It's just the reality of working on a big team?

16 A. Correct.

17 Q. You would agree with me, though, that you believed that  
18 community outreach was important and necessary given  
19 plaintiffs' law firms and GASP, the environmental advocacy  
20 group, were doing their own community outreach work?

21 A. Yes, I thought it was a good strategy.

22 Q. And you believed that Get Smart, which you were familiar  
23 with, was actually helping to level the playing field by  
24 telling the other side of the story that GASP and  
25 plaintiffs' attorneys weren't telling?

1       A. Yes.

2       (Government's Exhibit 266 was referenced.)

3           MR. BOUCHARD: Sam, if you could please pull up  
4 Government Exhibit 266.

5       Q. While Sam's pulling that up, you were asked a question  
6 by Mr. Ward in his direct examination of you. He said,  
7 "Did you know that Oliver Robinson picked up a check for  
8 \$14,000 four days before he spoke to the AEMC?" Do you  
9 remember that?

10      A. I do.

11      Q. What's the date on the top of Government's Exhibit 266?

12      A. It is February 4, 2015.

13      Q. And do you recall that you testified in your direct  
14 examination in response to questions from Mr. Ward that you  
15 attended staff meetings?

16      A. Yes.

17      Q. Does this appear to be notes from one of those staff  
18 meetings that you would have attended?

19      A. Yes.

20      Q. And who took these notes at these staff meetings, do you  
21 recall?

22      A. I don't. It would have been somebody in our  
23 environmental section, maybe Amy Benschoter. I just don't  
24 remember specifically.

25      Q. Is it fair to say that these notes would have been taken

1 at or near the time of the actual meeting?

2 A. Yes.

3 Q. And fair to say that if something's recorded in the  
4 notes, it probably was actually said in the meeting or  
5 discussed in the meeting?

6 A. Whoever was taking the notes had an incentive to get it  
7 accurate, yes.

8 MR. BOUCHARD: Sam, I'd like to first look at Roman  
9 Numeral I(A) (1).

10 Sam's going to highlight that for us.

11 Q. Do you see there where it says "Comments submitted by  
12 others, including ADEM, AG, governor's office, Manufacture  
13 Alabama, and BCA"?

14 A. Yes.

15 MR. BOUCHARD: And, Sam, if you could go down to (2),  
16 please, right underneath that.

17 Q. Do you see where it says "Successfully worked with  
18 neighborhood residents, and approximately 100 neighborhood  
19 residents also submitted comments in opposition to the  
20 listing"? Is that right?

21 A. Yes.

22 Q. "Worked" is past tense, right?

23 A. Yes.

24 Q. So you understood as of February 4, 2015 that  
25 neighborhood residents, approximately 100 of them, had

1 already submitted comments in opposition to the proposed  
2 NPL listing?

3 A. Yes.

4 MR. BOUCHARD: And if you can go down to page 2, please  
5 Sam, Roman numeral V, right under where it says "community  
6 neighborhood outreach/business group."

7 Q. It says "Community effort currently underway," doesn't  
8 it?

9 A. Yes.

10 Q. And it says "Encouraged neighborhood residents to file  
11 comments opposing NPL listing," right?

12 A. Yes.

13 MR. BOUCHARD: And if you go down -- this is the last  
14 point I'm going to make with this document -- Sam, to  
15 letter D.

16 Q. Doesn't it say, Mr. Simpson, "Helped encourage  
17 neighborhood residents to file comments opposing NPL  
18 listing"?

19 A. Yes, it does.

20 Q. So this document is describing work that has occurred as  
21 of February 4, 2015?

22 A. Correct.

23 Q. And you have no knowledge of whether the \$14,000 check  
24 that Oliver Robinson picked up on February 16, 2015 was to  
25 compensate the foundation for this work?

1 A. No, I have no idea.

2 MR. BOUCHARD: Thank you. Nothing further at this  
3 time.

4 THE COURT: Redirect?

5 MR. WARD: Yes, Your Honor, briefly.

6 REDIRECT EXAMINATION BY MR. WARD:

7 Q. Mr. Simpson, you recall Mr. Bouchard asking you on  
8 cross-examination about the many attorneys at Balch who  
9 worked on Drummond matters?

10 A. Yes.

11 Q. How many Balch attorneys went to that AEMC meeting in  
12 February of 2015?

13 A. Probably just me.

14 Q. I think you already said this, but were you aware at  
15 that time that Oliver Robinson or his foundation was  
16 working for Balch and Drummond?

17 A. No.

18 MR. WARD: Could we look at Government's Exhibit 74?

19 Q. Mr. Essig asked you questions about the extranet.

20 A. Yes.

21 Q. Which I understand was available to personnel at Balch  
22 and others with an invitation?

23 A. Yes.

24 Q. The materials that you uploaded here, did any of those  
25 materials say that Oliver Robinson's foundation had just

1 been hired by Balch?

2 A. No.

3 Q. Did any of those materials that you uploaded refer to  
4 Oliver Robinson's picking up a check from Balch?

5 A. No.

6 MR. WARD: Could we look at Government's Exhibit 72?

7 Q. This is the *Environmental Update* we looked at. If we  
8 could look at page 2 and in particular the bottom piece of  
9 the page, Mr. Essig asked you questions about the bottom  
10 bullet point and what the Alabama River Alliance -- Rivers  
11 Alliance asked the commission to do.

12 Can you look at the last sentence of the first bullet  
13 point? Do you see where it says that "Congressmen  
14 requested the commission's and the department's assistance  
15 in determining the correct potentially responsible parties  
16 and in resolving the matter as expeditiously as possible"?  
17 Do you see that?

18 A. Yes.

19 MR. WARD: Thank you, Ms. Borden.

20 Q. Mr. Bouchard asked you questions about knowing that ADEM  
21 Director Lance LeFleur had taken a firm position in  
22 opposition to the NPL listing?

23 A. Yes.

24 Q. That was before the February 2015 commission meeting?

25 A. Yes.

1 Q. Okay. But Representative Robinson still went to that  
2 meeting, and did he make comments about the NPL listing?

3 A. Yes.

4 Q. Okay. And did he make comments encouraging ADEM and the  
5 commission to do something with respect to that listing?

6 A. Yes.

7 MR. WARD: No further questions.

8 THE COURT: As to those limited topics, Mr. Essig,  
9 anything further?

10 MR. ESSIG: Nothing further, Your Honor.

11 THE COURT: Thank you.

12 Mr. McKnight?

13 MR. McKNIGHT: No, sir, Your Honor.

14 THE COURT: Thank you.

15 Mr. Bouchard?

16 MR. BOUCHARD: Briefly, Your Honor.

17 THE COURT: You may.

18 RECROSS-EXAMINATION BY MR. BOUCHARD:

19 Q. Mr. Simpson, I just want to ask you a few questions  
20 about Government's 72, which Mr. Ward just inquired about.

21 THE COURT: Solely as to the line relating to a  
22 congressman, that bullet point.

23 MR. BOUCHARD: Fair enough, Your Honor.

24 Q. That newsletter was not private or confidential, was it?

25 A. No.

1 Q. It was publicly available?

2 A. It was on our website.

3 Q. Do you have any idea of how many Balch attorneys  
4 reviewed it?

5 A. No. I mean, multiple. I was aware that at least a few  
6 reviewed it, but once it was on the website, I'm sure lots  
7 of others.

8 Q. If it was on the website, theoretically any Balch  
9 attorney could have reviewed it?

10 A. Yes.

11 MR. BOUCHARD: Thank you. Nothing further.

12 THE COURT: Is Mr. Simpson released?

13 MR. WARD: Yes, Your Honor.

14 THE COURT: Any objections from the defendants?

15 MR. ESSIG: No, Your Honor.

16 MR. BOUCHARD: No, Your Honor.

17 MR. McKNIGHT: No, sir.

18 THE COURT: Thank you, all.

19 Mr. Simpson, have a good day, sir.

20 THE WITNESS: Thank you. You too.

21 (Witness excused.)

22 THE COURT: Who is the government's next witness?

23 MR. WARD: The government calls Anne Heard.

24 THE COURT: Ms. Heard, good morning.

25 MS. HEARD: Good morning.

1 (Witness sworn.)

2 THE COURTROOM DEPUTY: Please state and spell your  
3 first and last name for the record.

4 THE WITNESS: My first name is Valeria, V-a-l-e-r-i-a.  
5 My last name is Heard, H-e-a-r-d.

6 THE COURTROOM DEPUTY: What city and state do you  
7 reside in?

8 THE WITNESS: I reside in Fayetteville,  
9 F-a-y-e-t-t-e-v-i-l-l-e, Georgia.

10 THE COURT: Mr. Ward, you may begin.

11 MR. WARD: Thank you, Your Honor.

12 VALERIA "ANNE" HEARD,  
13 duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION BY MR. WARD:

15 Q. Good morning, Ms. Heard.

16 A. Good morning.

17 Q. Where do you work?

18 A. Right now I work for the Atlanta Metropolitan State  
19 College. I'm an executive in residence there. I am  
20 employed by EPA, but my current work site is Atlanta  
21 Metropolitan State College. That's in Atlanta.

22 Q. Okay. And how long have you had that particular  
23 position?

24 A. So I'm rolling into two months now, so I'm really a --  
25 really well versed.

1 Q. How long have you been at EPA?

2 A. So I have been at EPA for 38 years. I started in 1979.

3 Q. And what did you do before that? Give us your  
4 educational background.

5 A. So I'm an attorney. I went to undergraduate at Duke  
6 University. I went to Emory Law School. I was in a family  
7 practice for about two years before I started working at  
8 EPA, and I've been at EPA ever since.

9 Q. I want to focus on the 2014-'15 time frame at EPA.  
10 During that time frame, what position did you have at EPA?

11 A. During '14-'15, I was deputy regional administrator for  
12 EPA Region 4, which is the southeastern region of USEPA.

13 Q. And is that based in Atlanta, Georgia?

14 A. That is.

15 Q. And who was the administrator at that point?

16 A. In 2014, it was -- Lisa Jackson was 2009, and then Gina  
17 McCarthy came after her. I'm sorry. I was just --

18 Q. And that's the administrator for the entire EPA?

19 A. Right.

20 Q. For Region 4, was Heather McTeer Toney the Region 4  
21 administrator during the '14-'15 period?

22 A. Yes. Heather was the regional administrator; that is  
23 correct.

24 Q. The regional administrator. Okay. So did you report to  
25 her?

1     A. I did. I served as Heather's deputy for the entire time  
2     that she was there.

3     Q. Okay. And what were your job duties as the deputy  
4     regional administrator?

5     A. So what I did was help Heather manage the region. So  
6     EPA, of course, administers several laws. We protect air,  
7     water, waste, and my job was to help with the substantive  
8     administration of those laws, to help with managing  
9     personnel, to help with relationships that we would  
10    establish in order to administer those laws. So whatever  
11    it took to help run the region is what the deputy regional  
12    administrator's jobs encompassed.

13    Q. Are you familiar with the 35th Avenue Superfund Site --

14    A. I am.

15    Q. -- here in Birmingham, Alabama?

16    A. I am very familiar with that site.

17    Q. Okay. In your role as the deputy regional  
18    administrator, did you do any work or have any involvement  
19    in that site?

20    A. I did. So the 35th Avenue site was one of Gina  
21    McCarthy's Making a Visible Difference sites. So it means  
22    that it was one of the sites that EPA focused on in  
23    particular.

24    Q. In connection with your involvement in the site, did you  
25    attend any meetings in Birmingham?

1       A. I attended a number of meetings in Birmingham. I mean,  
2 one of the ways that we addressed the 35th Avenue site was  
3 to try to build coalitions with the community, with the  
4 city, with other federal agencies to try to do more than  
5 just what EPA could do under its authority. And that  
6 required us to meet with a lot of constituents. So I was  
7 here a number of times.

8       Q. I want to direct your attention to December 2014.  
9 During that period, did you attend a meeting in Birmingham  
10 with Oliver Robinson?

11      A. I did.

12      Q. Okay. How did that meeting come about?

13      A. I can't remember exactly whether we were here for  
14 another purpose and we met with Oliver Robinson as a part  
15 of that, as an extension of that meeting. I believe we'd  
16 come down to meet with the mayor or a number of other  
17 officials and the Robinson meeting was a meeting that was  
18 set up just as part of our outreach efforts.

19      Q. Had you met Mr. Robinson at that point?

20      A. I had not.

21      Q. Did you know he was a state legislator?

22      A. I did. As a part of coming to the meeting and the  
23 background that we were given to prepare for that meeting,  
24 I knew that he was a state legislator.

25      Q. Where was the meeting held?

1     A. It was held in the hotel where we were staying. Don't  
2     ask me the name, but --

3     Q. Somewhere in Birmingham?

4     A. Somewhere in Birmingham, yes.

5     Q. Okay. Do you know who set the meeting up?

6     A. Probably -- so to answer your question, no, I don't  
7     exactly know, but I would imagine it would be one of the  
8     special assistants working for Heather. That is how our  
9     meetings usually got set up. It would either be the  
10    special assistant or someone from our Office of  
11    Congressional Affairs. Like Allison Wise would set up --  
12    probably it was Allison, thinking out loud, because she was  
13    in charge of our congressional liaison work.

14    Q. You said that you came to learn that Oliver Robinson was  
15    a state legislator as part of the background for the  
16    meeting. Was Oliver Robinson invited to that meeting  
17    because he was a state legislator?

18    A. That meeting was with Oliver Robinson -- yes. The  
19    meeting was with him individually. So the purpose of the  
20    meeting was to answer his questions, to give him  
21    information, and to make outreach with him individually.  
22    He was not or I don't recall him being at any of the other  
23    meetings that we attended. That was a meeting with Oliver  
24    Robinson.

25    Q. Do you recall who else attended the meeting?

1       A. Cynthia Peurifoy, Brandi Jenkins. Cynthia works in our  
2 environmental justice office, and she did a lot of work  
3 with the community. So she was generally, you know, in the  
4 forefront of any kind of outreach efforts we made. Brandi  
5 Jenkins was Heather McTeer Toney's special assistant. Shea  
6 Jones-Johnson was there. She was my special assistant.  
7 And I was there.

8       Q. In what capacity did you understand Oliver Robinson to  
9 be attending that meeting?

10      A. As in his legislative capacity. Just as a state  
11 legislator representing his constituents trying to get  
12 information about what EPA was doing in Birmingham or what  
13 our role was with the constituents that he represented.

14      Q. During the meeting, did he make reference to his  
15 constituents?

16      A. He did.

17      Q. To the constituents he represents?

18      A. He did. He did. He talked about -- well, he asked  
19 questions on behalf of his constituents, who he said had  
20 expressed concerns about the Superfund action that was  
21 being undertaken at 35th Avenue and proposed for the  
22 Tarrant neighborhood.

23      Q. You said that you were there to answer his questions.  
24 Did you perceive that Oliver Robinson had a particular  
25 message or angle with his questions?

1       A. He expressed a lot of concern about the Superfund  
2 process, about the impact of having a site placed on the  
3 NPL, on the property values of his constituents' homes. He  
4 expressed concerns. He had a lot of questions about how  
5 the Superfund process worked in terms of timing, was it a  
6 long process and in the meantime, what would happen to the  
7 constituents' property values. So he definitely had  
8 concerns or seemed skeptical about the EPA action.

9       Q. You said you understood him to be there as a legislator.  
10 Did that matter to you?

11      A. Absolutely.

12      Q. Why did that matter to you?

13      A. It mattered to me because the -- first of all, he was a  
14 public servant. He's there on behalf of his constituents.  
15 So my expectation would be that anything that he said or  
16 his concerns or questions would represent the concerns or  
17 questions of his constituents. So my goal in that meeting  
18 was to try to assure him that the Superfund process had  
19 great flexibility and that ultimately what you end up with  
20 is a clean site.

21           And so, yes, I guess the answer to the question is  
22 definitely the fact that he was a state legislator meant a  
23 lot as far as his potential impact on his constituents, his  
24 influence in the whole project, which as a member of the  
25 EPA team I fervently believed in.

1 Q. Hearing skepticism about the proposed NPL listing from a  
2 state legislator who represented constituents in that area,  
3 would that carry weight with you as an EPA official?

4 A. It would carry weight, absolutely. It would at least  
5 give me pause to consider why. Was I missing something?  
6 What was the legislator's perspective? Because the  
7 legislator is elected by people. He is or she is close  
8 to -- much closer to the constituency than I would be from  
9 Atlanta. So what a state legislator or a mayor or a public  
10 official believes or has concerns about would impact my  
11 evaluation of a matter.

12 Q. If Oliver Robinson had told you that he was actually  
13 working on behalf of a potentially responsible party, would  
14 that have changed the calculus for you?

15 A. Absolutely.

16 Q. How?

17 A. Because it would make clear that his direction was more  
18 in saving the responsible party's funds or money or  
19 protecting them than protecting the constituents that he  
20 represented. It would be exactly opposite of what my  
21 expectation would be from a state legislator.

22 Q. Did Oliver Robinson ask you during that meeting for  
23 permission to record the meeting?

24 A. He did not.

25 Q. Did he tell you he was recording the meeting?

1 A. He did not. I was completely surprised to find that  
2 out. No.

3 Q. When did you first find out that he had recorded the  
4 meeting?

5 A. I think I heard that it was -- there were some newspaper  
6 articles early on that might have mentioned it, but the  
7 first time was when I heard the recording, when you played  
8 it for me or when I heard -- heard it, actually heard it.

9 Q. Did Oliver Robinson tell you during that meeting that he  
10 was negotiating a contract on behalf of his foundation with  
11 Balch and Drummond?

12 A. He did not. He did not.

13 Q. Did he tell you that in the weeks or months after the  
14 fact?

15 A. Absolutely not.

16 Q. Did he ever tell you that?

17 A. No.

18 Q. Did anybody from Balch or Drummond ever tell you that?

19 A. No.

20 Q. And what year did you first learn about that?

21 A. 2016, 2017.

22 MR. WARD: That's all the questions I have, Your Honor.

23 THE COURT: Cross-exam?

24 MR. ESSIG: Yes, Your Honor. Thank you.

25 CROSS-EXAMINATION BY MR. ESSIG:

1 Q. Good morning, Ms. Heard.

2 A. Good morning.

3 Q. My name is Brandon Essig, and I'm one of the attorneys  
4 who represents Mr. Joel Gilbert in this case. I don't  
5 think -- you never met Mr. Gilbert in your work on the  
6 35th Avenue site; is that right?

7 A. Not that I recall.

8 Q. And, Ms. Heard, just want to be clear. Your role with  
9 EPA during sort of a key time frame here, 2014, 2015, is  
10 that you were the number two to Ms. Heather McTeer Toney;  
11 is that right?

12 A. Right.

13 Q. So I guess your responsibility and your duties would  
14 have covered sort of a variety of issues that would have  
15 come to Ms. Toney; is that right?

16 A. That's right. So the deputy regional administrator is  
17 the career -- highest-ranking career person in the region.  
18 And Heather as a regional administrator is -- or was a  
19 political appointee. So, generally, what deputy regional  
20 administrators do is provide the continuity or the  
21 institutional knowledge of the programs. We kind of anchor  
22 the agency.

23 Q. Yes, ma'am. And I guess if I understand correctly, what  
24 it sounds like is your role is probably to sort of help be  
25 one of the people on the ground helping Ms. Toney carry out

1 what sort of her priorities were or the administration's  
2 priorities were; is that correct?

3 A. That's correct.

4 Q. And you said that was a political appointee position.

5 Is that a position appointed by the president of the United  
6 States? Is that right?

7 A. Correct.

8 Q. And I don't know. Correct me. Is that an appointed  
9 position that requires confirmation by the U.S. Senate?

10 A. It does not.

11 Q. It doesn't? It's one that happens without them?

12 A. Correct.

13 Q. Now, you mentioned that one of the reasons that you and  
14 the EPA were involved in 35th Avenue and Tarrant is that  
15 this area had been designated as a Making a Visible  
16 Difference site; is that right?

17 A. Yes, sir.

18 Q. How many of those were there around the country at that  
19 time?

20 A. 50.

21 Q. Was there one in each state?

22 A. There was at least one. One, two, three.

23 Q. Okay.

24 A. You mean in each state?

25 Q. Yes, ma'am.

1     A. No. Not necessarily each state in the country, no.

2     Q. You said 50, and that's why I was trying to think if  
3 maybe there was one per state. But that wasn't the case?

4     A. No, no, no.

5     Q. What was the purpose of the Making a Visible Difference  
6 program?

7     A. So the thought was when the federal government or EPA  
8 shows up at a site because there are hazardous wastes in  
9 someone's back yard, usually there are other problems that  
10 are in that neighborhood or the federal government is the  
11 face of the government. EPA, when EPA comes to your house,  
12 it's not just EPA. You see the federal government.

13           So the thought was when we come, not to just have a  
14 narrow focus but to see if there are other agencies that  
15 could be involved in a particular area to help address some  
16 of the other problems like urban blight or educational  
17 deficiencies or food deserts or -- it would be to marshal  
18 the resources to try to address more than just the EPA  
19 issue.

20     Q. Okay. And you mentioned, Ms. Heard, I think on direct  
21 examination questions from Mr. Ward that one of the things  
22 y'all were doing there was building a coalition in the  
23 North Birmingham community; is that right?

24     A. Yes.

25     Q. And is the name of that coalition, if I recall

1 correctly, the North Birmingham Community Coalition? Is  
2 that right?

3 A. It was -- it had various names, but that was at least  
4 one of them, yes.

5 Q. I think I've seen the acronym NBCC; is that correct?

6 A. Yes.

7 Q. You mentioned that there were other federal agencies  
8 that got involved in that effort; is that right?

9 A. Right.

10 Q. And was the Department of Justice one of the agencies  
11 that was involved in that?

12 MR. WARD: Objection. Relevance.

13 THE COURT: Sustained.

14 Q. (BY MR. ESSIG:) Now, as part of this effort -- and  
15 again, I think you've already mentioned this, is that the  
16 Making a Visible Difference program was there to, in  
17 addition to potentially addressing any sort of scientific  
18 pollution that existed, also to sort of create a community  
19 revitalization program; is that right?

20 A. It was -- yes. That would be one benefit of focusing  
21 federal resources or one potential benefit of focusing  
22 federal resources or state resources or city resources in a  
23 particular blighted area or area impacted by a Superfund  
24 site.

25 Q. Okay. And Ms. Heard, I understand you told us you've

1 got a law degree and training as an attorney.

2 A. I do.

3 Q. And have you spent some time actually working in a legal  
4 role at EPA?

5 A. I have.

6 Q. And you're aware, you have some knowledge of CERCLA. I  
7 know it's a very complicated statute, but CERCLA and the  
8 Superfund, you have some knowledge of that?

9 A. I do.

10 Q. And RCRA I think is one of the other statutes that was  
11 at issue here; is that right?

12 A. That is correct.

13 Q. And just so I'm clear, is that the Making a Visible  
14 Difference program, that was an administrative priority  
15 that's not actually set out in CERCLA or RCRA; is that  
16 right?

17 A. That is absolutely correct.

18 Q. Okay. Those statutes deal with whether there's  
19 pollution on the ground and who might be liable for it?

20 A. That is correct.

21 Q. Now, I want to talk about your meeting with Oliver  
22 Robinson. And as I understand correctly, your meeting with  
23 Oliver Robinson, that was a part of this Making a Visible  
24 Difference effort, right? That's what that resulted from?

25 A. Yes.

1 Q. Okay. So that meeting with him -- and again, I think  
2 you stated on direct examination that was a part of a  
3 series of meetings that were taking place with important  
4 public officials in the Birmingham area?

5 A. Correct.

6 Q. As a part of that, you met with Mayor William Bell of  
7 Birmingham?

8 A. We did.

9 Q. And you met with, I think you told Mr. Ward, Mr. William  
10 Parker, who was a city councilman responsible for the area?

11 A. Yes.

12 Q. And did y'all also meet with Congresswoman Terri Sewell?  
13 Is that right?

14 A. We did.

15 Q. Congressman Spencer Bachus, was he involved?

16 A. I don't remember Congressman Bachus.

17 Q. Was Ms. Sewell the only congressperson that you remember  
18 meeting with?

19 A. Yes.

20 Q. And when you went and you met with Mr. Robinson, you  
21 stated that y'all got some background on him.

22 A. Not necessarily on -- yes. We did get background.  
23 Absolutely.

24 Q. Describe for us what that is. What is the background?

25 A. Basic information about who he is, name, who he

1 represents. Not any historical background. Just basic  
2 information.

3 Q. Okay.

4 A. So in this particular instance, what I basically knew is  
5 that he was a state legislator.

6 Q. Okay. And do y'all -- as part of that process, do y'all  
7 try to research and figure out if a public official you're  
8 meeting with might have a sort of a particular political  
9 point of view or perhaps some sort of bias in their past  
10 regarding a Superfund cleanup issue?

11 A. No. That -- I would have to say not really. That  
12 information might come up as a result of any kind of  
13 research that you do on an individual, you might find that  
14 out. But is that the purpose? Not so much. The purpose  
15 is just to be familiar with who you're meeting with so that  
16 you can be prepared for the kinds of questions they might  
17 ask or just so that you can best represent the agency in  
18 your contact with this person.

19 Q. Okay. For example, I mean, you're aware, Ms. Heard,  
20 that when you get involved in these matters, these  
21 environmental matters, that they often create sort of  
22 hot-button political issues. Would that be fair to say?

23 A. That would be very fair.

24 Q. You have to get sort of the EPA environmental groups on  
25 one side and you have sort of the industry and corporate

1 group on the other. Does this frequently work out that  
2 way?

3 A. It does --

4 Q. And --

5 A. -- work out that way.

6 Q. I'm sorry. I didn't mean to interrupt you. I  
7 apologize.

8 And so when you come into these meetings with these  
9 public officials, is it beneficial for you to know if they  
10 are a public official that has a lot of contacts and  
11 relationships with the business community?

12 A. Not really. I mean, I assume if it's a public official,  
13 that they are representing their constituents --

14 Q. Okay.

15 A. -- and that the nature of that job, of course, involves  
16 interactions with business communities and other  
17 stakeholder groups. But --

18 Q. Yes, ma'am.

19 A. -- it's not important for me to know what -- I don't  
20 know what else to say.

21 Q. Yes, ma'am. I understand. And would you agree with me,  
22 though, that a corporation, if it's in a representative's  
23 district, can be that representative's constituent? You  
24 would agree with that, wouldn't you?

25 A. Yes.

1 Q. And you used the term "stakeholders." That's a term  
2 that EPA uses to refer to sort of any business, any  
3 individual, any resident, any public official that might  
4 hold a stake in a particular action taken by EPA; is that  
5 right?

6 A. A community person, any resident in addition, yes.

7 Q. And a stakeholder would be a business or industry that  
8 EPA is seeking to regulate. Would that be correct?

9 A. So I would say a stakeholder is someone who has an  
10 interest in the outcome of whatever the EPA action is. And  
11 that would encompass a variety of entities.

12 Q. Okay. Would that include business and industry?

13 A. It would definitely include business and industry.

14 Q. In the research that y'all had done on Oliver Robinson,  
15 the background information that you had gotten on Oliver  
16 Robinson, had you learned that he had a lot of connections  
17 to the business community in Alabama prior to your meeting  
18 with him?

19 A. I had not.

20 Q. And during your meeting with Mr. Robinson, you said he  
21 had a lot of questions for you about the Superfund process;  
22 is that right?

23 A. That is correct.

24 Q. And was one of the processes that you described to him  
25 or your group collectively described to him, would that

1 have been how liability works under the Superfund?

2 A. Yes.

3 Q. And would you have explained to him how the NPL plays a  
4 role in any liability that a company or an industry may  
5 have?

6 A. Yes.

7 MR. ESSIG: Your Honor, I'd like to play portions of  
8 the recording for Ms. Heard.

9 THE COURT: Sure.

10 MR. ESSIG: Sam, if you'll play --

11 And Your Honor, I apologize. I don't recall the  
12 exhibit number for this exhibit. 19.

13 Sam, could you play Clip Number 2 from 19?

14 (Government's Exhibit 19 was referenced.)

15 (Audio evidence played in open court.)

16 MR. ESSIG: Pause right there.

17 Q. Ms. Heard, was that your voice we heard there?

18 A. That is my voice.

19 Q. And I think I heard the phrase "our convening power"?

20 A. Correct.

21 Q. Explain to us what that is, please.

22 A. So when we go to a site or an area, we have lines of  
23 authority. So for a Superfund site, we have the Superfund  
24 cleanup authority. But there might be other issues in that  
25 neighborhood, so poor housing, dilapidated housing, or, you

1 know, there might be lack of medical care.

2 So even though those are not in our direct line of  
3 authority, we can convene, we can bring other agencies,  
4 other entities to the table. So that's what I mean by  
5 convening. We can say to HUD or to FEMA or to the Corps of  
6 Engineers, "We are here. This is a problem that we are  
7 addressing, but we see that there are other problems. Is  
8 there something that you can address?"

9 Q. Okay. And so convening power means EPA can get other  
10 federal agencies and say, "We see issues other than  
11 specific acute environmental issues that you guys can help  
12 us address"? Would that be fair to say?

13 A. Correct.

14 MR. ESSIG: Sam, continue playing, please.

15 (Audio evidence played in open court.)

16 MR. ESSIG: And Sam, could you play Clip 3, please?

17 (Audio evidence played in open court.)

18 Q. And, Ms. Heard, just for clarification, that's  
19 Representative Oliver Robinson speaking right there; is  
20 that right?

21 A. That is correct.

22 MR. ESSIG: Please continue.

23 (Audio evidence played in open court.)

24 Q. Ms. Heard, was that you talking again there?

25 A. Yes.

1 Q. And there was a discussion about having a Superfund in  
2 an area and the EPA being there, that it gives you some  
3 leverage. What did you mean by that?

4 A. Well, the more people you have trying to solve a  
5 problem, the easier it is, let's say, for the PRPs who are  
6 principally the potentially responsible parties who are  
7 principally responsible for cleanup. So we've seen cases  
8 where there is a community revitalization effort going on  
9 and other entities will take part in the either cleanup  
10 effort or a site assessment effort or take part of the  
11 whole effort to revitalize a site or to clean up a site.

12 Q. And so by leverage, did you mean that the EPA's presence  
13 there working on a Superfund site allows you to use an  
14 entity's potential liability to also do some community  
15 revitalization?

16 A. I don't think I was thinking that when I said that. I  
17 thought more in a broader context. But if you ask -- are  
18 you asking me whether EPA's presence at a site gives us  
19 leverage with the PRPs? I'd have to say absolutely because  
20 there's legal liability.

21 The PRPs or the potentially responsible parties put the  
22 pollution there. And so that's the line of -- between the  
23 site and the party and EPA. If they were not responsible  
24 for the pollution, we wouldn't have any direct way to get  
25 them to clean up a site.

1 Q. But to be fair, Ms. Heard, a potentially responsible  
2 party is a party potentially responsible for the pollution;  
3 is that right?

4 A. That is correct.

5 Q. Okay. And then they can actually oppose their status as  
6 a PRP and they can be successful in that and ultimately not  
7 be responsible for the pollution; is that right?

8 A. That is correct.

9 MR. ESSIG: Sam, if you will play clip number 6,  
10 please?

11 (Audio evidence played in open court.)

12 Q. Ms. Heard, who is that speaking there?

13 A. Cynthia Peurifoy.

14 Q. And I heard her say to Mr. Robinson that there was  
15 something she thought he could help y'all with.

16 A. She did say "help us with."

17 Q. Okay.

18 MR. ESSIG: And we'll continue playing.

19 (Audio evidence played in open court.)

20 Q. And that's Ms. Peurifoy, if I hear correctly, Ms. Heard,  
21 asking Representative Robinson if he can help y'all with  
22 getting some of the companies to the table. Would that be  
23 fair to say?

24 A. I don't know if she said -- could you replay it for me?

25 Q. Yes, ma'am, sure can.

1 (Audio evidence played in open court.)

2 Q. Ms. Heard, do you agree with that?

3 A. Restate what I'm agreeing with.

4 Q. You don't have to if you don't. But is what we heard  
5 Ms. Peurifoy asking Mr. Robinson if he can help y'all with  
6 the companies that you want to negotiate with?

7 A. Yes. I would say that's what she's saying, yes.

8 Q. Thank you.

9 (Audio evidence played in open court.)

10 Q. And, Ms. Heard, there was a statement there again, I  
11 think by you, that the NPL is a powerful motivator for  
12 companies?

13 A. Right.

14 Q. What did you mean by that?

15 A. Well, with -- the NPL gives EPA access to funds to do  
16 remedial work which, by and large, is the most expensive  
17 work at most Superfund sites. So the potential that a  
18 party will have that kind -- will have to be responsible  
19 for EPA costs at a site tends to get more attention, more  
20 concentrated effort to resolve the issue than if you had no  
21 ties with a site.

22 Q. In other words, the NPL can end up costing a company a  
23 lot more money than something that's not on the NPL?

24 A. Not technically. No, not exactly that way. The NPL is  
25 a list of sites. It's EPA's decision, once you become an

1 NPL site, to spend money at that site. You can be an NPL  
2 site and EPA not fund that. I mean, there are a number of  
3 factors that go into EPA spending money at an NPL site,  
4 like getting the state's agreement. But once EPA  
5 prioritizes that site or puts it on the NPL, then EPA can  
6 access Superfund monies to clean up that site.

7 Q. Okay. And I think we heard in that clip there was a  
8 mention of y'all were hoping to not have to go through the  
9 process of litigation with --

10 A. Absolutely.

11 Q. Is that right?

12 A. Yes.

13 Q. And it was after that that there was the statement that  
14 the NPL is a powerful motivator; is that right?

15 A. It is. It is.

16 Q. And the reason it's a powerful motivator and y'all were  
17 talking about it being a powerful motivator is it something  
18 that could end up costing the company a lot of money?

19 A. The NPL is one key to EPA accessing cleanup funds for a  
20 site. That is correct.

21 Q. Okay. And that was a message that you wanted  
22 Mr. Robinson to take back to the companies that you were  
23 hoping he would talk to on your behalf?

24 A. I was only answering his question or just kind of  
25 responding to his question. I was not asking him to go

1 back and do anything.

2 Q. Okay. Ms. Heard, and we heard there, too, Mr. Robinson  
3 in that meeting with y'all. I think you mentioned before  
4 in your interview with the FBI, he's a very personable,  
5 likable individual?

6 A. Very.

7 Q. And we heard a lot of laughter there in the conversation  
8 that you had with him?

9 A. Yes.

10 Q. And I think you described that meeting previously as a  
11 pleasant, upbeat experience; is that right?

12 A. I might have.

13 Q. And Mr. Robinson, he never made any threats in that  
14 meeting with y'all, did he?

15 A. No. I didn't feel threatened.

16 Q. Okay. He never put any pressure on you at all, did he?

17 A. No.

18 Q. And he never said, "What I'd really like the EPA to do  
19 is not have Drummond or ABC Coke as a PRP"? He didn't say  
20 that, did he?

21 A. He just asked a lot of questions mainly during that  
22 meeting.

23 Q. Good, smart questions? Is that right?

24 A. He asked a lot of questions about the Superfund process.  
25 I thought that they kind of demonstrated his bias towards

1 the business side or the -- of the House. I don't know if  
2 I would characterize them as you say.

3 Q. Yes, ma'am. So you're saying that during that meeting  
4 with Mr. Robinson, you identified from him what you  
5 perceived to be as a bias towards business and industry?

6 A. Absolutely.

7 Q. And you said that that gave you pause; is that right?

8 A. It didn't give -- well, yes, it did give me pause. I  
9 was surprised. I expected him to be more concerned about  
10 what the impact would be on the health of people or the  
11 health of his constituents.

12 Q. Okay. And during your meeting with Mr. Robinson, he  
13 didn't ask you to not list the 35th Avenue site on the NPL,  
14 did he?

15 A. He did not ask that.

16 Q. And the EPA, in terms of what you saw, didn't change  
17 anything that it was doing in North Birmingham as a result  
18 of this meeting, did it?

19 A. Not to my knowledge.

20 Q. As a matter of fact, the site was listed on the NPL?

21 A. It was.

22 Q. Okay. And it's still listed as proposed -- or proposed  
23 for the NPL; is that right?

24 A. 35th Avenue is an NPL -- oh no, it's proposed.

25 Q. Okay. And it remains a proposed site; is that right?

1 A. It remains proposed.

2 MR. ESSIG: Just a moment.

3 No further questions, Your Honor.

4 A. No, it's listed. I'd have to check.

5 Q. Okay.

6 A. I don't remember if it actually got listed or whether  
7 it's proposed. So I'd have to check.

8 Q. But bottom line is Oliver Robinson, that meeting with  
9 him didn't change anything that y'all did; is that right?

10 A. No.

11 MR. ESSIG: Okay. Thank you.

12 THE COURT: Who's next?

13 MS. HODGES: I am, Your Honor.

14 THE COURT: Okay, Ms. Hodges.

15 THE WITNESS: Can I get some water?

16 THE COURT: Do we have any water for her?

17 THE WITNESS: Thank you.

18 CROSS-EXAMINATION BY MS. HODGES:

19 Q. Do you want to drink some before I start asking  
20 questions?

21 A. You can ask. I can't answer yet, though.

22 (Pause.)

23 A. All right.

24 Q. My name is Lawanda Hodges, and I represent Steve  
25 McKinney. And I just have some really quick questions for

1 you.

2 You indicated on direct examination that you are  
3 familiar with the 35th Avenue site, right?

4 A. Yes.

5 Q. In fact, you said that you're very familiar because that  
6 was during your tenure, I believe, at Regional 4 at the  
7 time?

8 A. Correct. Region 4.

9 Q. Region 4. And so you also remember that while you all  
10 were handling the 35th Avenue site, there was also a GASP  
11 petition pending, right?

12 A. A GASP petition pending? Yes, there was a GASP petition  
13 pending.

14 Q. Yes. And there is a difference between the 35th Avenue  
15 site and this GASP petition that was pending, right?

16 A. Correct.

17 Q. Right. So to be clear, the GASP petition was simply  
18 asking that the City of Tarrant be declared either a  
19 Superfund site or that the 35th Avenue site be extended to  
20 Tarrant as a Superfund; is that clear?

21 A. I'm clear. Yes.

22 Q. Okay. Is that a fair representation of what it was?

23 A. I think that's fair.

24 Q. And without getting into all the details of the  
25 petition, it's fair to say that ultimately EPA decides on

1 its own whether or not it's going to actually declare a  
2 Superfund site, whether some advocacy groups ask for it or  
3 not. Is that fair?

4 A. It is fair to say that EPA makes the ultimate decision  
5 about listing a site.

6 Q. That's right. Because EPA wants to make sure it gets it  
7 right and do its own due diligence, wouldn't you say?

8 A. I would say that EPA is going to consider the scientific  
9 evidence. They're going to consider the comments that they  
10 get during a listing process. They're going to consider  
11 the kind of objective facts about the case before they make  
12 a decision. They're going to consider as much information  
13 as they have to make the best decision that they can.

14 Q. Thank you. So is that a yes to my question? EPA, you  
15 as an agent for EPA, is going to do its own due diligence  
16 to make sure you get it right before you declare something  
17 a Superfund site?

18 A. I would say yes, we do diligently review our -- the  
19 information about a site. Yes, I would say that.

20 Q. Right. And so EPA actually went into Tarrant, and you  
21 did the test. You did a preliminary assessment; isn't that  
22 right?

23 A. We did. I think it was actually conducted by the State  
24 of Alabama for EPA.

25 Q. Okay. So on behalf of EPA, a preliminary assessment was

1 done, wasn't it?

2 A. Yes.

3 Q. Okay. And that's when you actually look at the data,  
4 but you also went to the site to actually test the soil;  
5 isn't that right?

6 A. That didn't happen until later. The preliminary  
7 assessment, as I recall, with Tarrant showed that further  
8 investigation was needed.

9 Q. Okay. And I appreciate that, but to answer my question,  
10 EPA or the state agency on behalf of EPA did do some type  
11 of analysis to make the determination?

12 A. That is correct.

13 Q. Yes, ma'am. And ultimately, this agency on behalf of  
14 EPA denied the GASP petition, didn't they?

15 A. Well, EPA denied -- was it EPA that denied the GASP  
16 petition? I would think so. I'm not sure -- I haven't  
17 looked at that GASP petition. It would have to be EPA.

18 Q. Okay. So I'll just ask it like this: The City of  
19 Tarrant was not declared a Superfund site, right?

20 A. That is correct.

21 Q. Right. And ABC Coke is located in the City of Tarrant,  
22 isn't it?

23 A. That's correct.

24 Q. Yes. And so now in regards to 35th Avenue that you are  
25 very well versed in, there was discussion about the NPL

1 listing, whether or not the 35th Avenue should be placed on  
2 the NPL?

3 A. Yes, there was definitely discussion. So my hesitation  
4 is, you know, the way that the agency works when you  
5 propose something for the NPL, it just encompasses so many  
6 people. So there might be conversations at the regional  
7 level, but ultimately that's a decision that's going to be  
8 made at the headquarters level. So I'm just not sure what  
9 I'm saying "right" to.

10 Q. Okay. Well, I'll simplify it. The NPL stands for the  
11 National Priorities List, right?

12 A. Correct.

13 Q. And that simply means that the -- how should I put this?  
14 The National Priorities List is a list of some contaminated  
15 sites in the nation that deserve to be on the list and get  
16 treated. Would that be a fair representation?

17 A. That is correct.

18 Q. And that's why it's called priorities, because these are  
19 the ones that the nation or the EPA on behalf of the  
20 federal government decided deserve to be treated first and  
21 foremost?

22 A. That's correct.

23 Q. And in order to get on that list, it has to go through a  
24 ranking system because, you know, ultimately you have to  
25 decide which sites deserve to be treated first and

1 foremost. So that's why they are ranked accordingly.

2 Would that be a fair representation?

3 A. Kind of sort of, but not really. So the way that the  
4 ranking works, it's like a numeric, there are criteria and  
5 factors that you look at to rank a site. And so you're  
6 going to come out with a number. I forget the range of the  
7 number. And Lord knows I am not the best person to talk  
8 about ranking Superfund sites.

9 But you get a number, and so you get on the list. But  
10 getting on the list doesn't mean that that ranking or that  
11 there's a particular order. Because the information that  
12 you use in the listing process is very preliminary. It's  
13 usually just the information that already exists. There's  
14 not a lot of remedial investigation. There's not a lot of  
15 study at that point.

16 So the information, you know -- so the fact that you  
17 are on the list and your number might be higher than  
18 another site on the list doesn't mean that you rank higher  
19 because of your number. Does that make sense?

20 Q. It does make sense, and I appreciate that. But to kind  
21 of simplify it, the point is that every site, be it  
22 35th Avenue here in Birmingham or it could be another site  
23 in another location, every contaminated site does not make  
24 its way to the NPL list, right?

25 A. That is absolutely correct.

1 Q. And so to be clear, that NPL list is not just designated  
2 for Alabama. It actually means that it is one of the most  
3 hazardous sites in the nation, right?

4 A. Correct.

5 Q. And you indicated that you all consider a lot of  
6 different things, science and comments from others; isn't  
7 that right?

8 A. That is correct.

9 Q. And that's actually why you all ask for a public  
10 comments period. You allow for a public comments period --

11 A. That's correct.

12 Q. -- for people to give their comments, right?

13 A. That is correct.

14 Q. And it's not just people. Anybody that has a vested  
15 interest or might be impacted by this listing, they could  
16 give their comments?

17 A. Absolutely.

18 Q. And there's nothing illegal or unethical about giving  
19 your comment, is there?

20 A. No.

21 Q. Actually, you all encourage it?

22 A. We do.

23 Q. Again, because EPA wants to make sure it does what they  
24 deem is right and they get everybody's input, right?

25 A. We do.

1 Q. You also were asked about the meeting with Oliver  
2 Robinson.

3 A. Yes.

4 Q. So I'm going to talk a little bit about that. You  
5 indicated on direct you're not sure who actually scheduled  
6 the meeting, but is it fair to say that EPA or you all as  
7 agents for EPA invited Mr. Robinson to the meeting?

8 A. I don't know whether we invited Mr. Robinson or we  
9 responded to Mr. Robinson's request. I don't know.

10 Q. Well, let's flesh that out a little bit. Wouldn't you  
11 agree that there's no other way for him to know that you  
12 all were coming from Atlanta to Birmingham, right?

13 A. So what happens frequently is representatives call our  
14 office of our congressional liaison and they talk about --  
15 and they might -- a representative might have a question or  
16 might want EPA to address a particular issue. And then  
17 that person, Allison Wise, they would work with the  
18 congressional office and with Heather or with our staff to  
19 try to set that up.

20 And it might turn out that being -- you know, they might  
21 have just taken advantage of the representative and us  
22 being in Birmingham at the same time. So I honestly -- I  
23 just don't know. I don't know whether he asked for it or  
24 how it came to be. I just don't know.

25 Q. Okay. And earlier in direct examination, I believe you

1 indicated that you think Ms. Toney's assistant might have  
2 scheduled or planned the meeting. Are you saying that that  
3 didn't happen?

4 A. I'm saying that I don't know how the meeting got  
5 scheduled. As I talked it out, most likely, because it was  
6 with a state legislator, it probably came from our Office  
7 of Congressional Affairs. They do more relating with state  
8 and local officials. But I honestly don't know how that  
9 particular meeting came to be.

10 Q. Okay. I appreciate that. And so during the meeting,  
11 although you might have not explicitly asked Mr. Robinson  
12 to convey information, you individually might not have  
13 asked him to do those things, you would agree that someone,  
14 one of your colleagues, asked him to help in a certain way?

15 A. I would definitely agree that Cynthia asked or said we  
16 could use your help with that. Yes, I heard that on the  
17 recording.

18 MS. HODGES: Thank you. I have no further questions.

19 THE WITNESS: Okay.

20 THE COURT: Thank you, Ms. Hodges.

21 Mr. Asbill?

22 CROSS-EXAMINATION BY MR. ASBILL:

23 Q. Good morning, Ms. Heard. How are you?

24 A. I'm fine. And how are you?

25 Q. My name is Hank Asbill. Excuse me for not introducing

1 myself first. Have you got enough water?

2 A. I have.

3 Q. Thank you. You were just asked if you knew whether  
4 Oliver Robinson invited himself or whether you all invited  
5 him. And I understand that you're not exactly sure about  
6 that, correct?

7 A. That is correct.

8 Q. Who would be sure about that within the EPA?

9 A. The person who scheduled it. I mean, I'm sure you could  
10 trace that down through contacting our congressional office  
11 in Region 4. Allison Wise, that's -- I would imagine if  
12 she scheduled it, she has some kind of record of it.

13 Q. Would any of the other folks who attended that meeting  
14 know the answer to that question?

15 A. They might. They might.

16 Q. Who else attended?

17 A. Brandi Jenkins, Heather McTeer Toney's special  
18 assistant; Cynthia Peurifoy; Shea Jones-Johnson, who's my  
19 special assistant.

20 Q. Okay. And with respect to what was said or what  
21 occurred at the meeting, you have listened to the tape  
22 recording of the meeting, correct?

23 A. I have.

24 Q. And is there anything about that tape recording that you  
25 think is incomplete or inaccurate?

1       A. Well, the portion that I listened to kind of started in  
2 the middle or -- and ended abruptly. So I would have to  
3 say it might -- I didn't hear a complete recording of that  
4 entire meeting.

5       Q. Okay. With respect to what you did hear, that  
6 accurately reflected what happened, to your knowledge?

7       A. To my knowledge, yes.

8       Q. Okay. And essentially, it would be accurate for me to  
9 say that Oliver Robinson was basically asking questions?

10      A. Yes, sir.

11      Q. Okay. And you are an attorney and you have dealt with  
12 these kinds of matters as an attorney for EPA; is that  
13 correct?

14      A. I have.

15      Q. Have you ever dealt with Balch & Bingham in connection  
16 with any environmental or Superfund matters?

17      A. Other than this 35th Avenue site or -- I don't recall.  
18 I really don't know. I mean, I handle a lot of matters for  
19 the region, so I can't say that they weren't tangentially  
20 involved in something. I don't know.

21      Q. Did you know whether or not Balch & Bingham had a very  
22 widely respected environmental section at the law firm?

23      A. I knew that they had an environmental section, yes, that  
24 was very well thought of, yes.

25      Q. Okay. And do you think that the folks at Balch &

1       Bingham in the environmental section themselves would not  
2       know the answers to the questions that Oliver Robinson  
3       asked you all?

4       **A.** I have no idea.

5            MR. WARD: Objection. Foundation.

6            THE COURT: Sustained.

7       Q. (BY MR. ASBILL:) Do you have any reason to believe that  
8       any competent environmental lawyer would not already know,  
9       from your experience of 38 years, would already know the  
10      answers to the questions that Oliver Robinson asked you?

11       MR. WARD: Objection. Speculative.

12       THE COURT: You can answer that, ma'am.

13       **A.** Would you repeat the question?

14       THE COURT: Let me speed things up. Do you believe his  
15      questions exhibited knowledge in the subject area or were  
16      they basic, rudimentary-type questions?

17       THE WITNESS: Yes.

18       Q. (BY MR. ASBILL:) Now, with respect to this meeting --  
19      and when you were down here, by the way, you also -- and  
20      some questions have been asked about GASP. Did you meet  
21      with any representatives of GASP, or did your group meet  
22      with them?

23       **A.** So I am certain that GASP, members of GASP were at some  
24      meetings that we went to in North Birmingham. I know I  
25      have met some. But, you know, this particular meeting, I

1 don't recall meeting anyone from GASP.

2 Q. Okay. With respect to GASP, did you do any research on  
3 that organization?

4 A. I did not.

5 Q. Do you know whether anybody else from your group or EPA  
6 did?

7 A. I am certain that there are people in Region 4 who are  
8 familiar with GASP, the organization. I'm certain there  
9 are people knowledgeable. I'm certain there are probably  
10 people in our Air Division that have worked with or been in  
11 contact with GASP over the years on a number of matters.

12 Q. So do you believe that folks at the EPA knew what GASP's  
13 interests were, all its members were?

14 MR. WARD: Objection. Foundation.

15 THE COURT: You may answer that question, ma'am, if you  
16 know.

17 A. Would you repeat the question?

18 Q. (BY MR. ASBILL:) Yeah. Do you know or do you have any  
19 reason to know whether or not GASP, when you met with them,  
20 whether when you folks met with GASP, did you understand or  
21 have any reason to know exactly what their motivations were  
22 and who was behind GASP?

23 A. No. I would not -- I did not know or have that kind of  
24 in-depth knowledge of GASP. I did not.

25 Q. Well, you said that when you met with Oliver Robinson,

1 you didn't know that Oliver Robinson, that his foundation  
2 had a contract with a potentially responsible party,  
3 correct?

4 A. That is correct.

5 Q. And that's something that you say you would have liked  
6 to have known, right?

7 A. Yes.

8 Q. Because that would put whatever was said among you all  
9 to -- put it in better context, correct?

10 A. That's correct. That's fair.

11 Q. All right. And that would be true with any other person  
12 that you met or any other interested party, right?

13 A. Yes.

14 Q. Did you ever know that Oliver Robinson owned or had  
15 property near the 35th Avenue site?

16 A. I did not.

17 Q. All right. Oliver Robinson, I take it, never said  
18 anything to you about having another agenda with a man  
19 named John Powe?

20 A. He did not.

21 Q. Did y'all ever meet with John Powe? Do you know who he  
22 is?

23 A. I -- the name is familiar. Does -- but I don't recall  
24 John Powe. Can you -- what did -- who is he?

25 THE COURT: That's all right.

1 Q. (BY MR. ASBILL:) You don't have any recollection of who  
2 he is or whether or not Ms. Toney met with Mr. Powe?

3 A. I'm not sure -- no, not accurately enough to answer.  
4 I -- not enough to know for sure.

5 Q. I'm not asking you to speculate. That's fine. Whatever  
6 you know, you know. And whatever you don't know, that's  
7 fine. You said that Oliver Robinson in some of these  
8 questions that he was asking seemed to have some sort of  
9 pro-business bias?

10 A. Yes.

11 Q. And that --

12 A. Well --

13 Q. I'm sorry. Go ahead.

14 A. Go ahead. No, you go ahead.

15 Q. Am I wrong in what you said?

16 A. No, you are not wrong in what I said.

17 Q. Does it surprise you that somebody that you're meeting  
18 with might be interested in the economic impact or whatever  
19 EPA might be doing?

20 A. Not at all.

21 Q. And would I be fair in suggesting that there's got to be  
22 a balance between health and economics in all these sort of  
23 situations?

24 A. Yes.

25 Q. All right. And if there's a minimal health risk, for

1 example, and a maximum negative impact in terms of  
2 economics, that might sway a decision one way or another  
3 and vice versa?

4 **A.** Yes.

5 Q. Now, the --

6 **A.** Except in this instance with Oliver Robinson, I think I  
7 would have expected more balanced questions. In other  
8 words, it didn't surprise me that he would be concerned  
9 about any particular thing or business. I think if he'd  
10 asked questions that were, you know, more health-related or  
11 demonstrated concern for the residents, that -- just it  
12 would have been more balanced, as you said, in my view.

13 Q. Well, what if he already knew about the health issues  
14 and he wanted to find out about the economic ones?

15 **A.** It would have still -- I'm just saying that what it  
16 appeared to me, it would have -- my impression from that  
17 conversation was imbalanced because of the one direction of  
18 the question.

19 Q. You talked about this Making a Visible Difference  
20 program, correct?

21 **A.** I did.

22 Q. And that originated in Washington with Gina McCarthy?

23 **A.** That is correct.

24 Q. Who was the head of the EPA?

25 **A.** That is correct.

1 Q. All right. And would you agree with me that in these  
2 kinds of situations -- and I'm talking about Superfund or  
3 NPL issues -- that there is a collision of law, politics,  
4 health, business, lots of interests, lots of  
5 constituencies, and lots of agendas, correct?

6 A. Yes.

7 Q. All right. And I know that Mr. Essig asked you  
8 something, and I believe that you misspoke and he asked you  
9 about it. But you talked initially about the PRPs,  
10 potentially responsible people -- or parties, excuse me,  
11 being the ones who put the pollution there, correct?  
12 That's what you said initially.

13 A. Correct.

14 Q. All right. And then he asked you, well, wait a minute,  
15 potentially means maybe they did, maybe they didn't --

16 A. Correct.

17 Q. -- right? So does the EPA start from a proposition that  
18 with respect to potentially responsible parties, that they  
19 are guilty until they're proved innocent?

20 A. Absolutely not. So we have a whole cadre of  
21 investigators who look into the ties of the individuals  
22 with the chemicals that we find at the site or the  
23 activities of a particular company with the contamination.  
24 So we don't -- what we do is try to make sure that there is  
25 a strong link between a potentially responsible party and

1 the site. And the reason that we use the phrase  
2 "potentially responsible party" is because that hasn't been  
3 adjudicated. That matter, liability, hasn't been  
4 adjudicated.

5 At the point that we are talking to the parties, the  
6 parties are also in a great position to know what their  
7 liability or responsibility is for contamination at a site.  
8 But at that point, we are not in court. We really do try  
9 to work things out without having to litigate.

10 Q. And sometimes people who are potentially responsible  
11 parties agree they are, in fact, responsible parties and  
12 they settle with you, right?

13 A. Yes.

14 Q. And sometimes they don't agree that they are responsible  
15 parties and they don't settle, correct?

16 A. That is correct.

17 MR. ASBILL: I have no further questions.

18 THE COURT: Any redirect for Ms. Heard?

19 MR. WARD: No, Your Honor. May the witness be excused?

20 THE COURT: Any objections from anyone?

21 MR. ESSIG: No, Your Honor.

22 MS. HODGES: No, Your Honor.

23 THE COURT: Any objections from Mr. Roberson?

24 MR. ASBILL: No, sir.

25 THE COURT: Okay.

1       Ms. Heard, thank you for being here. Safe travels back  
2 to Atlanta, ma'am.

3       THE WITNESS: Thank you.

4       THE COURT: Thank you. You're free to go.

5 (Witness excused.)

6       THE COURT: Members of the jury, it's seven minutes  
7 after noon. Let's stop here for lunch. Let me stress to  
8 you again not to discuss this case among yourselves either  
9 in the jury room or anywhere else. And if you do take your  
10 lunch outside of the courthouse, in the event anyone  
11 approaches you about this case, please let me know.

12       We are in recess until 1:25. Enjoy your lunch. And  
13 again, please do not talk about the case during the lunch  
14 break. Thanks, everyone.

15 (The following proceedings were had in open court  
16 outside of the presence and hearing of the jury.)

17       THE COURT: Thanks, everyone. Please give them a  
18 minute or two before you leave the courtroom, please.

19 (Lunch recess.)

20       THE COURT: Good afternoon, everyone. Remain seated,  
21 please. Let's wait for Ms. Humphrey, and then we'll bring  
22 the jurors in.

23 (The following proceedings were had in open court in the  
24 presence and hearing of the jury.)

25       THE COURT: Good afternoon, everyone. Be seated,

1 please.

2 Who is the government's next witness?

3 MS. MARK: The government calls Scott Phillips.

4 THE COURT: Mr. Phillips, good afternoon.

5 MR. PHILLIPS: Good afternoon.

6 (Witness sworn.)

7 THE COURTROOM DEPUTY: Please state and spell your  
8 first and last name for the record.

9 THE WITNESS: My first name is Willie, W-i-l-l-i-e, and  
10 last name is Phillips, P-h-i-l-l-i-p-s.

11 THE COURTROOM DEPUTY: What city and state do you  
12 reside in?

13 THE WITNESS: Verbena, Alabama.

14 THE COURT: You may begin, Ms. Mark.

15 WILLIE "SCOTT" PHILLIPS,

16 duly sworn, was examined and testified as follows:

17 DIRECT EXAMINATION BY MS. MARK:

18 Q. Good afternoon, Mr. Phillips.

19 A. Good afternoon.

20 Q. Can you tell us what you do for a living?

21 A. I'm an environmental consultant.

22 Q. All right. And where are you currently employed?

23 A. At Strada Professional Services.

24 Q. Can you give us just a brief summary of your education  
25 and background?

1     A. I graduated from Mississippi State University in 1984  
2 with a degree in construction engineering technology.

3     Q. Prior to working for Strada, did you work for a company  
4 called SEC?

5     A. Yes, I did.

6     Q. Southeast Engineering & Consulting?

7     A. Yes, I was a consultant to them.

8     Q. All right. Can you tell us, what is SEC?

9     A. It's just a small consulting firm.

10    Q. I've heard it referred to as SE+C, and I've also  
11 referred to it as SEC. How would you refer to it?

12    A. Southeast Engineering & Consulting.

13    Q. Okay. Perfect. Thank you for helping me with that.

14    A. Uh-huh.

15    Q. You said you were a consultant for SEC?

16    A. That's correct.

17    Q. I want to talk to you and focus your attention on the  
18 period of time between 2014 and 2016. During that period  
19 of time, were you a consultant for SEC?

20    A. I was.

21    Q. Okay. And did you also hold a role with the Alabama  
22 Environmental Management Commission?

23    A. I did.

24    Q. And what was that role?

25    A. I was vice chair.

1 Q. You were a member of the commission?

2 A. Correct.

3 Q. All right. What were your duties as a member of the  
4 commission?

5 A. Promulgate rules and regulations, hire and fire the  
6 director, and hear any hearings or appeals.

7 Q. Can you describe for us what the relationship is between  
8 ADEM and the environmental commission?

9 A. ADEM is the body that implements rules and regulations  
10 in the state. The commission provides oversight.

11 Q. How long did you serve as a commissioner?

12 A. Roughly 15 years.

13 Q. And are you still a commissioner?

14 A. I am not.

15 Q. And when did you retire from your position as a  
16 commissioner?

17 A. April 2017.

18 Q. Are you familiar with the 35th Avenue Superfund Site in  
19 Birmingham?

20 A. I am.

21 Q. All right. In September of 2013, do you recall that the  
22 EPA identified, I believe it was, five potentially  
23 responsible parties?

24 A. I recall that.

25 Q. All right. Did you have some experience working with

1 Superfunds?

2 A. I did.

3 Q. Can you describe for us a little bit your experience  
4 working with Superfund sites?

5 A. I've worked on Superfund sites since the mid '80s doing  
6 investigations, feasibility studies, cleanups, designs  
7 across the southeast.

8 Q. Okay. Did SEC pursue work with any of the PRPs that had  
9 been identified in the 35th Avenue site?

10 A. Yes.

11 Q. And do you recall in around October of 2013 that SEC  
12 submitted a proposal to Balch & Bingham and Drummond?

13 A. Yes, roughly around then.

14 (Government's Exhibit 142 was referenced.)

15 MS. MARK: Can we pull up Government's Exhibit 142,  
16 which is already in evidence?

17 Q. Mr. Phillips, I'm showing you Government's Exhibit 142.  
18 This is an email from Trey Glenn to Joel Gilbert and David  
19 Roberson in October of 2013.

20 Do you recognize that this is an email sending the  
21 proposal on behalf of SEC to Joel Gilbert and David  
22 Roberson?

23 A. Yes, sending a draft scope proposal.

24 Q. Okay.

25 MS. MARK: Can we go to the second page of this

1 document, please?

2 Q. And, Mr. Phillips, does this appear to be the draft  
3 proposal that was attached to the email we just looked at?

4 A. Yes, it does.

5 Q. Okay. Looking there in the first paragraph, it  
6 references that the proposal is focused on "providing  
7 technical support and community involvement and public  
8 outreach activities." Do you see where I'm referring to  
9 that?

10 A. Yes, I do.

11 Q. All right. Tell us, what type of technical support was  
12 SEC offering to provide?

13 A. Review of documents, review of whatever EPA may have  
14 already had for the site.

15 Q. Okay. And with respect to community involvement, what  
16 does that refer to?

17 A. Just understanding what's going on in the community,  
18 what impact a potential cleanup or investigation may have  
19 on that community.

20 Q. Can you describe for the jury what work SEC would be  
21 doing to implement this community involvement?

22 A. Well, originally getting information, gathering  
23 information that was going on in the community, what the  
24 cleanup was anticipated to be, what the removal action  
25 which is referenced in here would be, and what impact that

1 would have on the community.

2 Q. Okay. There is also a reference there to public  
3 outreach activities. What type of services would SEC be  
4 providing for public outreach activities?

5 A. Providing input on taking those technical documents and  
6 putting them in a form that could be communicated,  
7 education, communications, documents, things like that for  
8 the public.

9 Q. And when you say "the public," do you mean residents and  
10 people living in the community?

11 A. Yes, and others, I mean, other stakeholders.

12 MS. MARK: Thank you.

13 Q. Mr. Phillips, do you recall that SEC submitted a résumé  
14 and history of their experience to Drummond and Balch to  
15 try and get this work?

16 A. Yes.

17 Q. Okay. And what experience did you personally have that  
18 was part of that proposal?

19 A. I mean, the experience on the Superfund sites that I  
20 mentioned earlier and investigations on contaminated sites.

21 Q. Did you have particular experience in the areas of  
22 community outreach?

23 A. I did.

24 Q. Can you tell us about that?

25 A. Each Superfund site typically has a community around

1 them or in close proximity. And so once again,  
2 understanding the impact of any investigation or cleanup on  
3 the surrounding community has always been a part of doing  
4 the technical work, taking that technical information and  
5 sharing it with the community and understanding the impact  
6 of the cleanup on that community.

7 Q. How was SEC qualified to do the community outreach work?

8 A. In the sense of we had people on staff that had done  
9 that on different sites.

10 Q. Do you recall if SEC was hired by Drummond and Balch to  
11 work with them on the Superfund site?

12 A. Yes.

13 Q. And was there a contract that was executed?

14 A. Yes.

15 Q. All right.

16 (Government's Exhibit 146 was referenced.)

17 MS. MARK: And we'll just take a quick look at the  
18 contract, at Government's Exhibit 146.

19 Q. And, Mr. Phillips, is this a copy of the contract  
20 between Balch & Bingham and Southeast Engineering &  
21 Consulting for the work we've just been discussing?

22 A. It appears to be, yes.

23 Q. This is the first page of the contract?

24 A. Yes, yes.

25 Q. All right. And what was the date that this contract was

1       executed?

2       **A.** According to the first paragraph, effective on  
3       November 22, 2013.

4       **Q.** Okay. And looking at the first paragraph under  
5       "recitals," it references "Consultant possesses experience  
6       in matters related to environmental and regulatory and  
7       political matters in Alabama." Do you see that?

8       **A.** Yes.

9       **Q.** Can you explain for us what experience SEC had in  
10      environmental, regulatory, and political matters?

11      **A.** Just the work that we've done historically on  
12      environmental projects, permitting, regulations,  
13      negotiations, things like that.

14      **Q.** And was there a particular client that you were doing  
15      this work for for Balch?

16      **A.** Yes.

17      **Q.** And who was that?

18      **A.** Drummond.

19      **Q.** Was SEC paid for the work they did on this contract?

20      **A.** As far as I know, yes.

21      **Q.** Did you get paid?

22      **A.** I did.

23      **Q.** Okay. How did SEC get paid pursuant to the Balch  
24      contract?

25      **A.** In accordance with this agreement.

1 Q. Do you know who paid the -- who paid the services?

2 A. Oh. Drummond.

3 Q. Thank you. In addition to your experience, did SEC hire  
4 any consultants to work with them on community outreach?

5 A. Yes, ma'am.

6 Q. And do you recall when you first hired a consultant to  
7 work on community outreach?

8 A. I don't recall the exact date.

9 Q. Would you agree that it was from the beginning in around  
10 January of 2014 when SEC started doing work on this  
11 contract that you had a community outreach specialist?

12 MR. GILLEN: Objection. Leading.

13 THE COURT: Please rephrase.

14 MS. MARK: I can.

15 (Government's Exhibit 127 was referenced.)

16 MS. MARK: Can we pull up Government's Exhibit 127 and  
17 turn to page 2, please?

18 Q. Mr. Phillips, do you recognize this as an SEC invoice  
19 for the work performed that's to Balch?

20 A. Yes, it does appear to be.

21 Q. And what is the time period for this particular invoice,  
22 particularly the period of the labor?

23 A. January 2014.

24 Q. Okay. And looking at this particular bill, do you see  
25 on the bottom on January 2014 a Specialist III?

1     **A.** I do.

2     Q. Can you read for us the description of the work done by  
3     the Specialist III?

4     **A.** "Prepare for, participate in, and report on community  
5     and grassroots meetings."

6     Q. So did SEC have a specialist working on community  
7     outreach in January of 2014?

8     **A.** Yes.

9     Q. Who was doing that work?

10    **A.** Catrena Norris Carter.

11    Q. And how long did Catrena continue to do community  
12    outreach work?

13    **A.** Quite a while, but I don't know that I remember the  
14    exact dates.

15    Q. Okay. We may look at some things to help with that.

16    **A.** Okay.

17    Q. Can you describe for us the type of work that Catrena  
18    Carter was doing? Different from this description here,  
19    can you tell us what that really means? What types of  
20    things was she doing?

21    **A.** Gathering information in the community, talking to  
22    people in the community, attending meetings, public  
23    meetings, permit meetings, really gathering information  
24    about what was going on and bringing it back.

25    Q. Why did SEC hire Catrena Carter?

1       A. That's who we had gotten a recommendation from.

2       Q. Okay. And did she have any particular experience in  
3       doing community outreach?

4       A. Yes, I believe she did.

5       Q. Was she someone who had connections in the community and  
6       could meet with and go to these community meetings?

7       A. Yes, ma'am. As far as I know, yes.

8       Q. Who did Catrena report to at SEC about the work she was  
9       doing on community outreach?

10      A. Mainly Trey Glenn, but also me.

11      Q. Looking at this, did SEC bill for the time that Catrena  
12     Carter did in community outreach?

13      A. Yes, ma'am.

14      Q. Did SEC continue to do work for Balch on this particular  
15     contract through 2014 and 2015?

16      A. Yes, ma'am, I believe so.

17           MS. MARK: Thank you.

18           (Government's Exhibit 149 was referenced.)

19           MS. MARK: I want to turn your attention to  
20     Government's Exhibit 149. And if we can pull up  
21     Exhibit 149, we're going to go to the third page, please.

22      Q. Mr. Phillips, I'm showing you Government's Exhibit 149,  
23     and we're going to start from the bottom of this email and  
24     read up so that we're going forward in time. This bottom  
25     email is an email from Lance LeFleur. Do you know who

1 Lance LeFleur is?

2 A. I do.

3 Q. And what position did he have at that time?

4 A. Director of ADEM.

5 Q. All right. And the date of this email is September 16  
6 of 2014. And it is to Gina McCarthy. Do you know who Gina  
7 McCarthy is?

8 A. Yes, ma'am.

9 Q. And who is that?

10 A. I don't know what her title was at the time, but she was  
11 the Region 4 administrator.

12 Q. Okay. At EPA?

13 A. Yes.

14 Q. And there is also --

15 A. Yes, ma'am.

16 Q. Excuse me. There's also a reference to Heather McTeer  
17 Toney. Was she also with EPA?

18 A. Yes, ma'am.

19 Q. This particular email references Lance LeFleur is  
20 telling EPA that he does not concur in the NPL listing. Do  
21 you remember that the director made that position known to  
22 EPA?

23 A. I do.

24 Q. And do you agree that was in around September of 2014?

25 A. Yes, ma'am, based on what I'm looking at.

1 Q. Okay.

2 MS. MARK: If we can back out of that.

3 Q. And we're going to kind of travel up through this email.  
4 Does it appear that Lance LeFleur forwarded this email  
5 to -- it says it's a cc to Governor Bentley?

6 A. Yes, ma'am, it does.

7 MS. MARK: If we can go to page 2.

8 Q. There at the bottom of page 2 where it says "beginning  
9 forward message," Director LeFleur appears to have  
10 forwarded this message to Steve McKinney, David Roberson,  
11 and Trey Glenn. Do you see that?

12 A. Yes, ma'am, I do.

13 Q. Did you work with Steve McKinney on the Balch matter?

14 A. Yes, ma'am.

15 Q. How often would you interact with Steve McKinney?

16 A. It varied over the course of the project, but anywhere  
17 from weekly to every other week or so.

18 Q. Did you know him to be one of the attorneys at Balch who  
19 was working on this 35th Avenue matter for Drummond?

20 A. Yes, ma'am.

21 Q. What other attorneys at Balch did you understand were  
22 working on this matter?

23 A. Joel Gilbert and one other that I can't place her name  
24 at the moment.

25 Q. Okay. What about David Roberson, did you know David

1 Roberson?

2 A. Yes, ma'am.

3 Q. And how did you know David Roberson?

4 A. I'd known David for quite a while.

5 Q. How do you know David?

6 A. I mean, in this context?

7 Q. Yes, sir.

8 A. In this context, he was working for Drummond.

9 MS. MARK: We can travel up this email a little bit  
10 further to the -- we can go to the bottom of page 1,  
11 please.

12 Q. Mr. Phillips, do you see there on September 16 there  
13 appears to be an email from you at 2:03 p.m.?

14 A. Yes, ma'am.

15 Q. Do you recognize that as your email address, the  
16 sphillips@sec.llc?

17 A. Yes, ma'am, I do.

18 Q. And looking at this, is this an email that you sent to  
19 Trey Glenn?

20 A. It was.

21 Q. And it says "Trey, I'm thinking about sending an email  
22 to Steve." And below is a draft of an email to Steve; is  
23 that correct?

24 A. Yes, ma'am.

25 Q. Who is Steve in this email?

1       A. Steve McKinney.

2       Q. I want to take a look at -- if we can back out, I want  
3       to see if we can take a look at your mail.

4           MS. MARK: Kind of scroll up just a little bit.

5       Perfect.

6       Q. Mr. Phillips, can you see there on the screen what is  
7       the content of the email, the draft email that you were  
8       considering sending to Steve McKinney?

9       A. Yes, ma'am, I can.

10      Q. Okay. Do you remember this particular issue that you  
11       were attempting -- or considering sending an email to Steve  
12       McKinney?

13      A. Yes, ma'am, I do.

14      Q. Okay. In this particular draft email, you say down  
15       there in the middle of the page, it says "As you know, the  
16       comments from PRPs will not carry the same weight as those  
17       from others." Do you see where I'm referring to?

18      A. Yes, ma'am.

19      Q. And it goes on to say "Comments from others like the  
20       mayor, the governor, city business leaders, congressional  
21       delegation, et cetera, are possible commenters that could  
22       make a difference." Do you see that?

23      A. Yes, ma'am.

24      Q. Can you explain for us what you mean by those particular  
25       commenters would make a difference?

1       A. I believe that this was in reference to the National  
2 Priorities listing that was published in the *Federal*  
3 *Register*. And what I meant by that was this was a Super --  
4 EPA was proposing this to be put on the NPL. And so from  
5 the standpoint of a PRP making comments, it's based on  
6 their perspective. And from the others, they're kind of  
7 outside of that, third party, independent commenters.

8       Q. Did you consider third party commenters to be important  
9 to EPA in that process?

10      A. I believe that those comments are important to be heard,  
11 yes.

12      Q. There at the bottom it says "However, in my experience,  
13 unless there is significant technical arguments or  
14 alternative methods of cleanup for the commenters to refer  
15 to, it will be difficult for any real pressure to have EPA  
16 change the listing." Do you see where I'm referring to?

17      A. I do. Yes, ma'am.

18      Q. Were there discussions about putting pressure on EPA to  
19 not list this site on the NPL?

20      A. There was, yes, ma'am.

21      Q. And in what context were those conversations?

22      A. In the context of the technical arguments about why it  
23 shouldn't be listed.

24      Q. And who was a party to those conversations?

25      A. I was.

1 Q. And who else?

2 A. Balch & Bingham and Drummond in the conversations that  
3 we had had.

4 Q. Can you be a little more specific? Do you recall who at  
5 Balch you were working with on issues related to responding  
6 to the NPL listing?

7 A. Steve McKinney, Joel Gilbert, and Mary Samuels. That's  
8 the name I had forgotten.

9 Q. Mr. Phillips, I want to draw your attention now to  
10 December of 2014. Do you recall in December of 2014  
11 receiving an email about Oliver Robinson meeting with EPA  
12 officials?

13 A. Not off the top of my head, no, ma'am.

14 (Government's Exhibit 10 was referenced.)

15 MS. MARK: Can we pull up Government's Exhibit 10?

16 Q. Mr. Phillips, looking at Government's Exhibit 10, this  
17 is an email from Joel Gilbert, and it's dated December 10,  
18 2014. And are you one of the recipients of this email?

19 A. I am, yes, ma'am.

20 Q. Okay. And the subject is "EPA meeting on Friday"?

21 A. Yes, ma'am.

22 Q. There in the second line of the email it says -- let's  
23 see. Excuse me. Third line. "Representative Robinson has  
24 agreed to meet with them on Friday." Does this refer to  
25 Oliver Robinson going to meet with EPA officials?

1       A. Yes, ma'am, it appears to from this.

2       Q. Do you recall in your work on this matter that there was  
3 discussion of having elected officials meet with EPA?

4       A. I don't know that I remember meeting -- the discussion  
5 about meeting but most certainly commenting.

6       Q. There was a strategy to engage elected officials to  
7 comment on the NPL?

8       A. Yes.

9       Q. Was that something that was discussed with Balch and  
10 with Drummond?

11      A. Yes, ma'am.

12      Q. Was there an effort to try and persuade officials to  
13 comment on the NPL listing?

14      A. Not -- I don't -- I'm not aware of that. I was very  
15 focused on the technical arguments that we were making  
16 comments on.

17      Q. What, if anything, did you know about any relationship  
18 between Oliver Robinson and Balch or Drummond and  
19 particularly in December of 2014?

20      A. None other than he was a legislator.

21      Q. Did you know that Balch was considering or negotiating  
22 with Oliver Robinson to hire him to do community outreach?

23      A. No.

24            MR. ESSIG: Objection. Relevance.

25            THE COURT: Overruled.

1 Q. (BY MS. MARK:) Mr. Phillips, did you know that there  
2 was any --

3 THE COURT: He's already answered it, though.

4 MS. MARK: Okay. Thank you.

5 Q. At this particular point in December of 2014, was SEC  
6 still continuing to do community outreach?

7 A. I don't recall at that point.

8 MS. MARK: Can we pull up Government's Exhibit 127 at  
9 page 38?

10 Q. Mr. Phillips, looking at another invoice from SEC  
11 Consulting, do you recognize this as an invoice that covers  
12 the period of December 2014?

13 A. Yes, ma'am, I do.

14 Q. And there at the bottom, do you see was SEC continuing  
15 to do some community outreach work?

16 A. Yes, ma'am.

17 Q. And can you read for us what type of work was ongoing?

18 A. "Community outreach support, debriefs, and  
19 coordination."

20 Q. And who would have been doing that community outreach?

21 A. Catrena Norris Carter.

22 Q. And would that have included where it says "Community  
23 outreach support, debriefs, coordination," would that be  
24 what you described earlier, meeting with people in the  
25 community?

1     **A.** Yes, ma'am.

2     **Q.** Going to neighborhood association meetings?

3     **A.** Yes, ma'am.

4     **Q.** Thank you. How often during the December 2014 time  
5 frame, how often would you interact with Joel Gilbert and  
6 Steve McKinney about this work that you were doing?

7     **A.** Off and on but usually weekly.

8     **Q.** At that particular time, were y'all preparing to file  
9 comments to the NPL listing?

10    **A.** Yes, ma'am, technical comments.

11    **Q.** Would you consider that a particularly active period of  
12 time?

13    **A.** Yes, ma'am.

14    **Q.** Did you ever receive any update about Oliver Robinson's  
15 meeting with EPA?

16    **A.** Not that I recall, no.

17    **Q.** Do you know if that meeting was recorded?

18    **A.** No, ma'am.

19    **Q.** Were you ever provided with a summary of the EPA meeting  
20 with Oliver Robinson?

21    **A.** Not that I recall, no, ma'am.

22    **Q.** I want to ask you some more questions about Oliver  
23 Robinson. Did you know Oliver Robinson?

24    **A.** Yes, ma'am.

25    **Q.** How did you know him?

1     A. I had met him a few years earlier at a conference down  
2     on the coast.

3     Q. And did you know him to be a state legislator?

4     A. Yes, ma'am, I did.

5     Q. Did you ever have occasion to meet Oliver Robinson at  
6     the Balch & Bingham office?

7     A. Yes, ma'am, I did.

8     Q. Can you describe that for us?

9     A. I met him twice at the Balch & Bingham office. Once  
10   when I was coming to a meeting, he was ending a meeting.  
11   And I was asked at that meeting if I would introduce him to  
12   Lanier Brown because he was wanting to make public comment  
13   at the commission meeting.

14       And then the second time was a meeting after that to  
15   talk about possible people in the neighborhood who might be  
16   able to help on community engagement.

17     Q. We're going take those meetings separately. You said --  
18   was the first one where you met him coming in or out of the  
19   Balch office?

20     A. I was coming in, yes, ma'am.

21     Q. You were coming in and Oliver Robinson was leaving?

22     A. They were finishing up a meeting, yes.

23     Q. Who is "they"?

24     A. Mr. Robinson, Mr. Gilbert, and Mr. Roberson.

25     Q. What did you understand Oliver Robinson was meeting with

1 them about?

2 A. I did not know.

3 Q. Was that meeting in February of 2015?

4 A. That sounds about the time frame, yes, ma'am.

5 (Government's Exhibit 129 was referenced.)

6 MS. MARK: Can we pull up Government's Exhibit 129 at  
7 326? And can we highlight the second entry at the top?

8 Q. Mr. Phillips, I'm showing you this is an invoice from  
9 the Balch & Bingham law firm to Drummond on the 35th Avenue  
10 matter. It references there a time entry for Joel Gilbert  
11 on February 11, 2015. And do you see there where it says  
12 "Prepare for and attend meeting with Oliver Robinson, Trey  
13 Glenn, Scott Phillips, and David Roberson regarding AEMC  
14 meeting and North Birmingham"? Do you see where I'm  
15 referring to?

16 A. Yes, ma'am.

17 Q. Do you recall if this was the date that you met Oliver  
18 Robinson at the Balch & Bingham office?

19 A. I'm not quite sure because it's not my invoice. It's  
20 around the right time frame.

21 Q. Did you have any conversation with Oliver Robinson?

22 A. At that meeting?

23 Q. At that time, yes, sir.

24 A. Just a cordial, "Good to see you."

25 Q. Just shake hands in passing?

1     A. Shake hands. And then when I was asked to -- he'd like  
2     to meet the commission chair because he was going to do  
3     public comments, and I said I would put that together.

4     Q. Who asked you to introduce him to the commission chair?

5     A. It was either Joel Gilbert or David Roberson. I think  
6     it was Joel Gilbert, but I'm not sure.

7     Q. And why did they want you to introduce him to the  
8     commission chair?

9     A. My understanding was that he had not made a  
10    presentation. He didn't know the chair and would just like  
11    to meet him before he stood before him.

12    Q. And to be clear, the commission chair, is that Lanier  
13    Brown?

14    A. Yes, ma'am.

15    Q. What were you doing at Balch that day?

16    A. A technical meeting, I'm sure, relative to the comments  
17    that we were working on.

18    Q. When did you first learn that Oliver Robinson was  
19    planning to speak at the environmental commission?

20    A. I think the first time I saw it was I had an email from  
21    Lanier Brown.

22    Q. Can you tell us what you mean by that?

23    A. I think Lanier Brown had sent an email in February,  
24    before this meeting, stating that Oliver Robinson had  
25    requested to make public comment before the commission.

1 Q. Did you meet with Oliver Robinson to help prepare him  
2 for the AEMC meeting?

3 A. No, ma'am.

4 Q. Did you agree to introduce him to Lanier Brown?

5 A. Yes, ma'am, I did.

6 Q. Can you tell us about that?

7 A. I arranged to meet with them at a restaurant and -- late  
8 one afternoon and introduced the two of them together.

9 Mr. Robinson told him that he wanted to do a public comment  
10 period. And they sat and talked about that and people they  
11 knew and who they didn't know, and that was about it.

12 Q. And was that prior to Oliver's appearance before the  
13 commission?

14 A. Yes, ma'am.

15 Q. And do you know who paid for drinks?

16 A. I did.

17 Q. Where did that meeting take place?

18 A. I don't remember off the top of my head. Something  
19 George, I believe.

20 Q. Would it be Daniel George Restaurant?

21 A. Yes, ma'am.

22 Q. A restaurant here in Birmingham?

23 A. Yes, ma'am.

24 (Government's Exhibit 153 was referenced.)

25 MS. MARK: Can we pull up Government's Exhibit 153?

1 Q. Mr. Phillips, we just talked about a moment ago a  
2 meeting, the billing entry that I showed you for  
3 February 11. Do you recall that?

4 A. Yes, ma'am.

5 Q. Okay. This is an email the next day, February 12. Do  
6 you see that?

7 A. Yes, ma'am.

8 Q. All right. I want to start with the bottom email. It  
9 is an email from Joel Gilbert, and it's addressed to you,  
10 Scott Phillips, correct?

11 A. Yes, ma'am.

12 Q. With a copy to David Roberson and Trey Glenn?

13 A. Yes, ma'am.

14 Q. Looking at the email, it references "Scott, one thing  
15 that Trey mentioned in passing I thought we might discuss  
16 yesterday." Is that in reference to the meeting that y'all  
17 had on February 11?

18 A. It must have been, yes, ma'am.

19 Q. And it references "Catrena's efforts and also the report  
20 Catrena, David, and I discussed a couple of months ago."  
21 Do you see where I'm referring to?

22 A. Yes, ma'am. But you left "you." So it was me, David,  
23 and Catrena.

24 Q. And Joel?

25 A. And Joel, yes, ma'am.

1 Q. What report are you referring to there?

2 A. I'm not sure I recall. I think it was just about kind  
3 of overall community strategy.

4 Q. What were Catrena's efforts at that time?

5 A. Once again, collecting information, participating in  
6 those meetings and bringing that information back.

7 Q. And it says "Let's try to revisit this issue soon so  
8 that we can begin developing an action plan involving her  
9 and coordinating with Oliver." Do you see where I'm  
10 referring to?

11 A. Yes, ma'am.

12 Q. What did you understand Catrena was to coordinate with  
13 Oliver?

14 A. I think that's what prompted the meeting that we had  
15 following this.

16 Q. The second meeting?

17 A. The second meeting.

18 Q. But what involvement did Oliver have with community  
19 activities in North Birmingham?

20 A. At the time, none that I knew of other than a  
21 legislator.

22 Q. It says "I need to sit down with Oliver soon as well and  
23 get some feedback from him now that he's been involved a  
24 few months." What involvement did you know of Oliver  
25 having at that time?

1       A. His interest as a legislator for the area.

2       Q. Did you know of any contract or consulting agreement  
3       between Oliver Robinson or his foundation and Balch &  
4       Bingham?

5       A. No, ma'am.

6       Q. Did you know of any relationship between Oliver and his  
7       foundation and Drummond?

8       A. No, ma'am.

9       Q. Did you know that Oliver Robinson was a community  
10      outreach consultant for Balch and Drummond?

11      A. No.

12      Q. Was SEC actively preparing and doing community outreach  
13      work?

14      A. Yes, ma'am, at that time.

15      Q. And if we can look at the top email here, you respond  
16      saying "Sounds goods. I'll pull some things together."

17      A. Yes, ma'am.

18      Q. What types of things did you -- were you going to pull  
19      together on the community activities?

20      A. Probably the most recent things that we were hearing  
21      back from Catrena.

22      Q. I want to ask you about the commission meeting. Did you  
23      attend the February 2015 commission meeting, the Alabama  
24      Environmental Management Commission?

25      A. Yes, ma'am.

1 Q. Were you present when Oliver Robinson spoke?

2 A. Yes, ma'am.

3 Q. As a commissioner, did you also review his letter  
4 requesting to speak?

5 A. Yes, ma'am.

6 Q. And do you recall that letter to have been on his House  
7 of Representatives letterhead?

8 A. Yes, ma'am.

9 Q. In what capacity did you understand Oliver Robinson was  
10 appearing at the commission?

11 A. As a legislator.

12 Q. Did you understand that he was there speaking on behalf  
13 of concerned citizens?

14 A. Yes, ma'am.

15 Q. Do you recall if during his comments he referenced those  
16 citizens that he was there on behalf of?

17 A. Yes, ma'am, as best I recall.

18 Q. Did you know at that time on February 20 at the  
19 commission meeting, did you know that Oliver had negotiated  
20 and was in a consulting contract with Balch and Drummond?

21 A. No, ma'am.

22 Q. That his foundation had a contract with Balch?

23 A. No, ma'am.

24 Q. Were you aware of any community outreach work that  
25 Oliver Robinson had been doing on the 35th Avenue site for

1 Balch?

2 A. No, ma'am.

3 Q. Did you know that Oliver Robinson was paid \$14,000 four  
4 days before that appearance at the commission from Balch?

5 A. No, ma'am.

6 Q. I want to talk to you about the community strategy that  
7 you were working on developing, the one we talked about  
8 just a minute ago.

9 (Government's Exhibit 154 was referenced.)

10 MS. MARK: Let's first pull up Government's  
11 Exhibit 154.

12 Q. Mr. Phillips, I'll give you a second to take a look at  
13 this email. And tell me, does this appear to be attempting  
14 to set up a meeting between you, Joel Gilbert, David  
15 Roberson, and Trey Glenn about that community stakeholder  
16 strategy?

17 A. Yes, ma'am.

18 Q. Looking at this bottom email, it's on February 19, 2015,  
19 and it's from you; is that correct?

20 A. Yes, ma'am.

21 Q. Would you agree with me that that's the day before  
22 Oliver appeared at the commission?

23 A. Yes, ma'am.

24 Q. And in this email, are you telling Joel Gilbert and  
25 David Roberson that you are attaching a document about

1 community and stakeholder strategy? Is that what the first  
2 line there says?

3 A. Yes, ma'am.

4 Q. Okay. Was this a document that had been part of  
5 conversations that you'd had with Joel Gilbert and David  
6 Roberson about the community strategy?

7 A. Yes. And others over the entire time that we had worked  
8 on the project, yes.

9 Q. But did you assemble that document based on  
10 conversations that were had with Joel Gilbert, David  
11 Roberson, Trey Glenn, and your work on the 35th Avenue --  
12 this project?

13 A. Yes, ma'am.

14 Q. It references there, it even says "I will be in  
15 Montgomery tomorrow for the commission but could meet on  
16 Monday." So you were proposing meeting the week after the  
17 commission; is that fair?

18 A. Yes, ma'am.

19 Q. If we back out of this, does it appear, looking at the  
20 top of this email, that y'all agreed to meet on Wednesday  
21 the following week?

22 A. It appears, yes, ma'am. I can't see what my response  
23 was, but based on this, yes.

24 Q. That y'all were preparing to have a meeting?

25 A. Yes.

1 Q. Do you recall having a meeting at Balch & Bingham just a  
2 few days after the commission meeting where you discussed  
3 this PowerPoint, this community strategy stakeholder  
4 strategy?

5 A. Yes, ma'am.

6 MS. MARK: Can we pull up Government's Exhibit 129 at  
7 329? If we can look at the February 25 entry right there.

8 Q. Mr. Phillips, I'm showing you another billing entry from  
9 Balch. This is for Joel Gilbert on February 25. And it  
10 references "Prepare for and attend meeting with SE+C and  
11 Mr. David Roberson regarding community outreach strategy."  
12 Does that appear to be the meeting that we are talking  
13 about where you presented this community strategy?

14 A. Yes, ma'am.

15 Q. So can we agree that that was five days after the  
16 commission meeting?

17 A. Yes, ma'am.

18 (Government's Exhibit 161 was referenced.)

19 MS. MARK: Can we go to Government's Exhibit 161?

20 Q. Mr. Phillips, looking at this, does this appear to be  
21 the email where you forwarded to Joel Gilbert, David  
22 Roberson, and with a copy to Trey Glenn, a copy of the  
23 community stakeholder strategy PowerPoint?

24 A. Yes, ma'am, a draft, yes.

25 Q. Draft. All right. I want to walk through this

1 PowerPoint. If we can go to the first -- to the next page,  
2 page 2. Mr. Phillips, do you recognize this as a  
3 PowerPoint presentation that you prepared to present at  
4 Balch?

5 A. Yes, ma'am, to go through.

6 Q. Say that again. I'm sorry.

7 A. To go through at the meeting, yes, ma'am.

8 Q. And did you incorporate points into this presentation  
9 that were based on meetings that you'd had with Joel  
10 Gilbert and David Roberson about the community strategy?

11 A. Not with the community strategy. I mean, it was other  
12 meetings that I put in here for a community strategy.

13 Q. Who was present for -- when you presented this  
14 PowerPoint?

15 A. As I recall, Joel Gilbert, David Roberson, me, and I  
16 believe Trey may have been there.

17 MS. MARK: Can we go to the next page where it  
18 references "purpose"?

19 Q. Is this the purpose of the community strategy?

20 A. Yes, ma'am.

21 Q. So the purpose, there's three purposes: To prevent the  
22 35th Avenue site from being added to NPL; is that right?

23 A. Yes, ma'am.

24 Q. All right. To prevent the preliminary assessment  
25 created by GASP petition from being successful in expanding

1 the site?

2 A. Yes, ma'am.

3 Q. And to separate the issues from remediation from  
4 community revitalization?

5 A. Yes, ma'am.

6 Q. Were those purposes that were discussed with Joel  
7 Gilbert and David Roberson?

8 A. Yes, ma'am.

9 MS. MARK: If we can go to -- let's look at the next  
10 page very quickly.

11 Q. Mr. Phillips, can you describe for us and tell us what  
12 this particular page represents?

13 A. This is just a representation of all the stakeholders  
14 involved with the 35th Avenue Superfund Site.

15 MS. MARK: If we can go to the next page, please.

16 Q. The title of this page is "Messaging Themes." Can you  
17 tell us what you mean by "messaging"?

18 A. Just the messages you want to get out.

19 Q. To who?

20 A. Community, the public, EPA.

21 Q. And are these the messages that, based on the meetings  
22 you had with Drummond and with Balch, that this was the  
23 message that they wanted to get out into the community?

24 A. These were drafts of what we were going to talk about,  
25 yes.

1 Q. The day you presented this PowerPoint on February 25,  
2 did y'all discuss these messaging themes?

3 A. We just went through the list, but we talked about each  
4 bullet.

5 MS. MARK: Can we go to the next page?

6 Q. Mr. Phillips, the next page references "Current  
7 Resources." Can you read for us what the current resources  
8 were for community strategy?

9 A. "Drummond team, ABC Coke team, Balch & Bingham team,  
10 Steve Bradley, and SE+C team."

11 Q. Who is Steve Bradley?

12 A. A public relations consultant.

13 Q. And to your knowledge, was Steve Bradley doing public  
14 relations or consulting on the 35th Avenue matter?

15 A. As far as I knew, yes, ma'am.

16 Q. Was there any discussion in the meeting on  
17 February 25 when you were talking about the current  
18 resources of adding Oliver Robinson to the team?

19 A. Not that I recall, no, ma'am.

20 Q. Did anybody speak up and say that Oliver Robinson is a  
21 consultant doing community outreach?

22 A. No, ma'am.

23 Q. Did you understand these to be the only resources  
24 available to Balch and to Drummond to work on community  
25 strategy?

1       A. It was the only ones that we had been working with to  
2       that point.

3       Q. Mr. Phillips, this was five days after Mr. Robinson had  
4       given his comments at the commission. Was there any  
5       discussion of Oliver Robinson at the meeting on  
6       February 25?

7       A. Not that I recall, no, ma'am.

8       Q. Were there any discussions about having a state  
9       legislator who had made a public statement to the  
10      commission that was favorable to the position of Balch and  
11      Drummond?

12      A. Not that I recall, no, ma'am.

13           MS. MARK: Let's go to the next page.

14      Q. This references "Audience Groups." And I notice there's  
15      a number of different groups that are listed here, and some  
16      of them are elected officials or legislative delegations.  
17      In looking at the audience groups for the message, was  
18      there any discussion of Oliver Robinson?

19      A. I don't recall specifically, but there was a local  
20      legislative delegation identified on here, and it may have  
21      come up in that discussion.

22      Q. Do you recall specifically any discussion of Oliver  
23      Robinson being involved with community outreach?

24      A. No, ma'am.

25           MS. MARK: Can we go to the next page, please?

1 Q. Mr. Phillips, this page is titled "Individual Audience  
2 Strategies." Do you see where I'm referring to?

3 A. Yes, ma'am.

4 Q. There is a reference there at the top to "Core  
5 Community." What does Core Community mean?

6 A. The community itself where the Superfund site was.

7 Q. Where the residents lived?

8 A. Of the 35th Avenue Superfund Site.

9 Q. The first bullet under "Core Community" says "Hijack  
10 NBCC." Did I read that correctly?

11 A. Yes, ma'am.

12 Q. Was that based on meetings that you'd had with Joel  
13 Gilbert and David Roberson and the messages that they  
14 wanted to get out in the community?

15 A. That was based on Walter Coke having worked with that  
16 group in the past and an idea of working with them moving  
17 forward.

18 Q. I'm sorry. Working with them?

19 A. Yes, ma'am.

20 Q. Did I read that correctly when it says "Hijack NBCC"?

21 A. Yes, ma'am.

22 Q. And you interpret that as working with them?

23 A. Yes, ma'am.

24 Q. Was that something that was discussed in the meetings,  
25 to hijack NBCC?

1       A. Not that I recall specifically, no, ma'am.

2       Q. So those words that you put in this PowerPoint, "hijack  
3       NBCC" is supposed to be "work with NBCC"?

4       A. Yes, ma'am.

5       Q. And NBCC, you understand, is North Birmingham Community  
6       Coalition?

7       A. Yes, ma'am.

8       Q. Did you understand that coalition to be a coalition that  
9       was formed by EPA?

10      A. No, ma'am, not at that time.

11      Q. There's also reference to supporters there in the  
12       middle. It says "Engage Support." Can you tell me what  
13       that means?

14      A. That's just -- yes, ma'am. To identify those  
15       stakeholders that supported those purposes and align them  
16       with those messages.

17      Q. Was that discussed at the meeting on February 25?

18      A. In general, in no more detail than what's on the slide,  
19       but yes.

20      Q. There was a discussion of engaging those individuals who  
21       were supportive of Balch and Drummond's position?

22      A. In general, yes.

23      Q. In opposing the NPL?

24      A. Yes, ma'am.

25      Q. So five days after the commission, was there any

1 discussion of engaging Oliver Robinson to support this  
2 community strategy?

3 A. Not that I recall, no, ma'am.

4 Q. Did anyone in that meeting speak up and say that Oliver  
5 Robinson is a consultant on community outreach working on  
6 the team?

7 A. No, ma'am.

8 Q. Were you aware of any role that Oliver Robinson would be  
9 playing in community outreach?

10 A. Only as a legislator for the area.

11 Q. At the end of this PowerPoint presentation at this  
12 meeting, February 25, what was the plan going forward with  
13 the community strategy?

14 A. I don't think there was a real decision on how to move  
15 forward other than to have that next meeting that we had.

16 MS. MARK: Thank you.

17 (Government's Exhibit 156 was referenced.)

18 MS. MARK: Can we pull up Government's Exhibit 156?

19 Q. Mr. Phillips, looking at Government's Exhibit 156, this  
20 is an email from Trey Glenn on March 6, 2015. Do you see  
21 where I'm referring to?

22 A. Yes, ma'am.

23 Q. Okay.

24 MS. MARK: And if we can back out of this a second, show  
25 him the body. Can we capture from "NPL" through "Tarrant"?

1 Q. And does this appear to you to be a summary of ongoing  
2 activities by SE+C and reporting that to Joel Gilbert and  
3 others about the work y'all were doing?

4 A. It appears it with this, but I didn't see what was  
5 before that. Could we go back?

6 Q. Yes, we can. There at the top, it says "Looking forward  
7 to talking to you soon. The following are the main  
8 categories of ongoing items that we are working on."

9 A. Yes, ma'am. Thank you.

10 Q. I want to talk about the one that says "Community and  
11 Stakeholder Engagement." Do you see that one there kind of  
12 in the middle of the page?

13 A. Yes, ma'am.

14 Q. It says "Community positioning, listening, coordinating  
15 with the legal team regarding messaging." Do you see that?

16 A. Yes, ma'am.

17 Q. And there's references to ADEM, active conversations  
18 with ADEM and EMC. Do you recall what active conversations  
19 were ongoing with ADEM and the commission?

20 A. I just knew that Joel and David, I believe, were meeting  
21 with ADEM.

22 Q. All right. And you yourself were a member of the  
23 commission?

24 A. Yes, ma'am.

25 Q. Were they also meeting with you in your role as a

1 commissioner on this issue?

2 A. Not -- no, ma'am. I was on the team here.

3 Q. Okay. So you did not meet with Joel Gilbert and David  
4 Roberson as a commissioner?

5 A. I may have met with them as a commissioner with  
6 Commissioner Brown.

7 Q. Looking at the community, the first line in there, what  
8 was the messaging and coordinating that was going on at  
9 this particular time? This was March 6, 2015, so maybe a  
10 week or so after the meeting on February 25.

11 A. I think still just gathering information and listening  
12 what was going on and seeing what direction we were going  
13 to take.

14 Q. Who was doing the listening and coordinating in the  
15 community?

16 A. I still think it was at that point Catrena Norris  
17 Carter.

18 Q. Why was Oliver Robinson not listed as being involved in  
19 the community or stakeholder engagement?

20 A. I can't answer that. He wasn't involved with us.

21 Q. You mentioned earlier that there was a second meeting at  
22 Balch --

23 A. Yes, ma'am.

24 Q. -- where you met Oliver Robinson. Let's talk about that  
25 meeting.

1 MS. MARK: Can we pull up Government's Exhibit 129 at  
2 338? And we're looking at April 20, the bottom entry.

3 Q. Mr. Phillips, this is another Balch billing record for  
4 April 20, 2015, and it's Joel Gilbert. And it references  
5 "Prepare for and attend meeting with Oliver Robinson, SE+C,  
6 Mr. David Roberson regarding North Birmingham community  
7 outreach and new issues with ADEM." Do you see where I am?

8 A. Yes, ma'am.

9 Q. Do you recall having a meeting at Balch with Oliver  
10 Robinson on April 20?

11 A. Yes, ma'am.

12 Q. Okay. Can you tell us about that meeting? Who was  
13 present?

14 A. I believe it was me and Catrena, may have been Trey  
15 Glenn, Joel Gilbert, Oliver Robinson, and David Roberson, I  
16 believe.

17 Q. What do you recall about that meeting?

18 A. That meeting was really a discussion about if the  
19 strategy was to move forward with outreach, who would be a  
20 good person in the neighborhood.

21 Q. Was there discussion about community outreach in  
22 Tarrant?

23 A. Yes, ma'am.

24 Q. Why was Oliver Robinson at that meeting?

25 A. My understanding was to provide some insight into who

1      might be a good person to engage in the community.

2      Q. Was Oliver Robinson the person who would be engaged in  
3      the community?

4      A. That's not my understanding, no, ma'am.

5      Q. Did you know at that time that Oliver Robinson was a  
6      consultant on community outreach for Balch?

7      A. No, ma'am.

8      Q. Was there any discussion that Oliver Robinson was a paid  
9      consultant?

10     A. No, ma'am.

11     Q. What did you understand Oliver -- why Oliver was there?

12     A. I mean, once again, he was a legislator for that area,  
13     and he knew the community.

14     Q. Did you believe he was there in his capacity as a  
15     legislator?

16     A. Yes, ma'am.

17     Q. At some point did SE+C's involvement in community  
18     outreach begin to slow down?

19     A. Yes, ma'am.

20     Q. Prior to that, did you provide Joel Gilbert and David  
21     Roberson with your suggestions about what they should do in  
22     the community?

23     A. In the meeting that we spoke about earlier, yes.

24     Q. The messaging?

25     A. Yes, ma'am.

1 Q. Did you also provide them with any suggestions about  
2 specifically how to deliver that message, whether it be  
3 door-to-door or website? Did you provide them with your  
4 thoughts on how to get that message out?

5 A. I may have. I just don't recall specifically.

6 Q. Do you know why the community outreach slowed down for  
7 SE+C?

8 A. No, ma'am, not off -- not truly, no.

9 Q. Did SE+C continue to do technical work?

10 A. Yes, ma'am.

11 Q. Even after the community outreach seemed to diminish?

12 A. Yes, ma'am.

13 Q. Would you agree that that was moving into the fall of  
14 2015 that SE+C's role doing community outreach may have  
15 slowed?

16 A. Yes, ma'am.

17 Q. Did you continue to meet with Joel Gilbert, Steve  
18 McKinney and David Roberson to discuss the work that you  
19 were doing on their behalf?

20 A. Yes, ma'am.

21 Q. How often would you meet with them carrying forward into  
22 the fall of 2015? How often would you meet with them?

23 A. I don't recall, but it was, you know, sporadic as things  
24 came up, you know, once a month, twice a month.

25 Q. At any point did you learn that the Oliver Robinson

1 Foundation had been hired to do community outreach?

2 A. You mean after the indictments? Yes, ma'am.

3 Q. Well, I'm more talking about in 2015.

4 A. No, ma'am.

5 Q. When you were working with them and doing the technical  
6 work for SE+C, did you at any time learn that the Oliver  
7 Robinson Foundation had been hired to do community  
8 outreach?

9 A. No, ma'am.

10 Q. Was SEC capable of doing community outreach in Tarrant?

11 A. Yes, ma'am.

12 MS. MARK: Your Honor, I think that's all I have for  
13 Mr. Phillips at this point.

14 THE COURT: Thank you. Cross-exam.

15 MR. ESSIG: Yes, Your Honor. Just a moment, please.

16 Your Honor, what time is the court planning on taking a  
17 break, just so that I can be prepared to --

18 THE COURT: You still have 20 minutes before I do that.

19 MR. ESSIG: Okay. Thank you.

20 THE COURT: Are you ready to go? If you need time, I  
21 can take a break now if that will help expedite things.

22 MR. ESSIG: I'll go ahead and get started.

23 THE COURT: Okay.

24 CROSS-EXAMINATION BY MR. ESSIG:

25 Q. Good afternoon, Mr. Phillips. How are you?

1 A. Good afternoon.

2 Q. We've never met before; is that right?

3 A. That's right.

4 Q. My name is Brandon Essig, and I'm one of the attorneys  
5 that represents Joel Gilbert. You see Mr. Gilbert here in  
6 the courtroom?

7 A. I do.

8 Q. Mr. Gilbert was the man, one of the men from Balch &  
9 Bingham that hired you to work for him --

10 A. Yes, sir.

11 Q. -- when you were at SE+C; isn't that right?

12 A. Yes, sir.

13 Q. And he hired your company, hired you? Hired you. Is  
14 that right?

15 A. Yes, sir.

16 Q. Hired you and Mr. Trey Glenn --

17 A. Yes.

18 Q. -- is that right? Paid y'all good money; is that right?

19 A. Yes, sir.

20 Q. And y'all did good work --

21 A. Yes, sir.

22 Q. -- for them. You did -- I think you referred to it as  
23 primarily what your responsibility was was technical work.

24 A. Yes, sir.

25 Q. Did I understand that correctly?

1     A. Yes, sir.

2     Q. And I think, as the jury has come to learn in this case,  
3     certainly as I have come to learn in this case, though I'm  
4     no scientist, and correct me if I'm wrong, is that  
5     typically an environmental issue, when we're using the term  
6     "technical," what we mean is science, right?

7     A. Yes, sir.

8     Q. It's technical. There's no wiggle room. There's no  
9     lawyering to it. It's technical. It's facts. Is that  
10    right?

11    A. Yes, sir.

12    Q. Facts and data are important. You'd agree with that,  
13    wouldn't you, Mr. Phillips?

14    A. I would, yes, sir.

15    Q. And accurate facts and data are important. Would you  
16    agree with that?

17    A. Yes, sir.

18    Q. And do I understand your testimony here today,  
19    Mr. Phillips, to be that as of February 25, 2015, you had  
20    no idea that Oliver Robinson was in any way involved in  
21    community engagement with Balch & Bingham in the North  
22    Birmingham community?

23    A. No, sir.

24    Q. You're saying you had no idea?

25    A. No, sir, not that I --

1 Q. As of February 25, 2015, is it your testimony here in  
2 front of this jury under oath today that you had never even  
3 heard of the concept of Oliver Robinson being involved in  
4 community engagement in North Birmingham?

5 A. Only as a legislator.

6 Q. Only as a legislator?

7 A. Yes, sir.

8 Q. Well, let me ask you this, Mr. Phillips: You  
9 testified -- this is not the first time you've testified  
10 under oath in this case, is it?

11 A. No, sir.

12 Q. All right. You previously testified in front of the  
13 grand jury in this case; is that right?

14 A. Yes, sir.

15 Q. And before -- you answered questions in front of the  
16 grand jury. You did that in front of Mr. Martin; is that  
17 right? He was the person asking you the questions?

18 A. Yes, sir.

19 Q. And you sat down just like did you here, you raised your  
20 right hand, you told everybody where you lived, and you  
21 swore under oath that you would tell the truth; is that  
22 right?

23 A. Yes, sir.

24 Q. Now, as I understand today, you have testified multiple  
25 times that anytime there was a discussion with Joel

1       Gilbert, David Roberson, anybody from Drummond or Balch  
2       about Oliver Robinson in the context of North Birmingham  
3       and the 35th Avenue Superfund Site, that the only  
4       discussions you ever had were about his role as a  
5       legislator in that area; is that right?

6       A. Yes, sir.

7       Q. Okay.

8           MR. ESSIG: Your Honor, may I approach?

9           THE COURT: You may.

10          Q. (BY MR. ESSIG:) Mr. Phillips, I'm handing you a copy of  
11       your grand jury testimony. If you would, take some time to  
12       look through it. It's about 43 pages. I've read it a  
13       couple of times. And could you please point out for the  
14       jury where you told Mr. Martin during your under-oath  
15       testimony then that you had had meetings with Balch,  
16       Mr. Oliver Robinson regarding the North Birmingham  
17       Superfund site and where you told them that those meetings  
18       were in his capacity as a state legislator?

19           THE COURT: You want him to spend time looking at 43  
20       pages?

21           MR. ESSIG: Well, let me do this, Your Honor.

22           THE COURT: Yeah --

23          Q. (BY MR. ESSIG:) Let's do this. If you will go to  
24       page 32, Mr. Phillips.

25       A. Yes, sir.

1 Q. Now, let's start at the top of page 32 at line 4.

2 Question: "Do you know a gentleman named Oliver Robinson?"

3 A. Yes, sir.

4 Q. And your answer is?

5 A. "I do."

6 Q. Okay. Your next answer is "How do you know Oliver  
7 Robinson?"

8 "Answer: Well, I had met him with Edmund in 2013 or '14  
9 just socially at a Partnering for Progress meeting. I  
10 really did not see him again after that." Is that right?

11 A. Correct.

12 Q. "And then I met with him when I went to a meeting at  
13 Balch & Bingham and they were finished"; is that right?

14 A. Yes, sir.

15 Q. "They, being Balch & Bingham, was finishing up a meeting  
16 with him before our meeting, before the meeting I was to go  
17 to"; is that right?

18 A. Yes, sir.

19 Q. And it says "Do you recall when this was?"

20 You said "I really don't. Late 2015, maybe early 2006."  
21 Is that correct?

22 A. Yes, sir.

23 Q. All right. Then we'll skip down to line 20.

24 "Question: Did you, as you were doing work under this  
25 contract with Balch, did you have interaction with Oliver

1 Robinson?" And your answer was?

2 A. "A couple of times, yes."

3 Q. Okay. Then line 24: "In what context did you interact  
4 with him?"

5 Your answer was "I was called to a meeting where they  
6 were going to talk about community strategy." Is that  
7 right?

8 A. Yes, sir.

9 Q. "Balch was going to talk about community strategy, and  
10 he was in that meeting?" Is that right?

11 A. "Yes, sir."

12 Q. That was your answer?

13 A. Yes, sir.

14 Q. Under oath?

15 A. Yes, sir.

16 Q. And then you said "And then I introduced him to Lanier  
17 Brown, our chairman, because he was going to make public  
18 comment at the Environmental Management Commission." Is  
19 that right?

20 A. Yes, sir.

21 Q. "Did you know that Oliver Robinson was a state  
22 legislator?"

23 Your answer was "I did." Is that right?

24 A. Yes, sir.

25 Q. Then it says "How did you learn that Oliver Robinson

1       wanted to appear and make a statement at the commission  
2       meeting?" That was the question.

3           And you stated, "I believe it was in that meeting where  
4       they were finishing and I was coming in. They just asked  
5       if I could introduce him to Lanier Brown because he was  
6       going to make comment at the hearing." Is that right?

7       A. Yes, sir.

8       Q. So let's back up just a little bit. And you had said,  
9       you had told them just before that that you had met him at  
10      a meeting at Balch where they were discussing community  
11      engagement strategy; is that right?

12      A. Yes, sir.

13      Q. And then the question: "Well, if I tell you that the  
14      meeting, that the commission meeting where he appeared,  
15      where Oliver Robinson appeared occurred on February 20 -- I  
16      believe that's the date -- of 2015, will that help you  
17      remember the date of" --

18           Your answer, "Yeah, it would."

19           -- "of when the meeting you mentioned?"

20           Then you said, "It would have been before that." Is  
21       that right?

22      A. Yes, sir.

23      Q. Okay. So you would have met him at a meeting at Balch  
24      where y'all were discussing community strategy; is that  
25      right?

1       A. I don't recall meeting him before that date.

2       Q. Okay. Before which date? Before the meeting where you  
3       were discussing community strategy, you don't recall --

4       A. I don't remember -- I think I had the two meetings I  
5       spent -- I talked about earlier backwards.

6       Q. Okay. So you would have -- early, before he appeared at  
7       the AEMC, you knew he had a relationship with Balch based  
8       on him being present for meetings and that there was some  
9       involvement in community outreach; is that right?

10       MS. MARK: Objection, Your Honor. He mischaracterizes  
11       the witness's testimony.

12       MR. ESSIG: He can answer.

13       THE COURT: I will give him a chance to answer, then,  
14       please.

15       A. What I said was I believe I got the two meetings  
16       backwards when I testified here.

17       Q. (BY MR. ESSIG:) Okay. That's fine. That happens. And  
18       then if we go -- we're on page 34 now, and let's go to line  
19       16.

20       Question: "And that meeting was breaking up, and  
21       Mr. Robinson, Oliver Robinson was leaving." And this is  
22       the end of the question. "And that's where you saw him?  
23       Did y'all exchange" --

24       And then your answer: "And he said -- and I don't  
25       remember if he said -- my recollection is he said" -- and

1 we're talking about Oliver Robinson there; is that right?

2 A. Yes, sir.

3 Q. -- "I'm going to -- I'm going to be making a public  
4 comment and, hey, I'd like to meet Lanier Brown. I hear  
5 he's the chairman. I haven't met him. I'd like to meet  
6 him before I come down there." Is that right?

7 A. Yes, sir.

8 Q. That's the comment that you related in the grand jury,  
9 statements that you remember Oliver Robinson making to you  
10 at a meeting at Balch & Bingham; is that right?

11 A. According to this, yes, sir.

12 Q. And if I read that correctly, that's him asking you to  
13 introduce him to Lanier Brown; is that right?

14 A. Yes, sir.

15 Q. And it's because he was going to make a commission at  
16 the AEMC -- you're a commissioner on the AEMC, and he  
17 wanted you to introduce him to Mr. Brown; is that right?

18 A. According to this, yes, sir.

19 MR. ESSIG: Just a moment, Your Honor.

20 Q. All right. Let me ask you to go forward to page 40,  
21 Mr. Phillips, and when you get asked some questions about  
22 Mr. Robinson's appearance before the AEMC.

23 Question on line 5: "Did you have any other conduct  
24 with Oliver Robinson prior to his testimony at the  
25 commission meeting?"

1       And your answer is, "Not -- not that I recall."

2       Is that right? Did I read that correctly?

3       **A.** Could you tell me which line you're on? I'm sorry.

4       **Q.** That's line 7, where your answer is, page 40.

5       **A.** Yes, sir.

6       **Q.** And then next question: "Was it your understanding that  
7       Mr. Robinson was appearing at the commission meeting in his  
8       official capacity as a state legislator representing  
9       citizens here in Birmingham?"

10       And your answer was, "I don't know that I know it that  
11      way. I just knew that he wanted to make a comment. I'm  
12      trying to think of how it was even presented at the agenda.  
13      I just don't recall."

14       **A.** Yes, sir.

15       **Q.** And I think if you'll review this transcript, you will  
16      see that that's the only time you've ever referenced Oliver  
17      Robinson as a public official. You get asked some  
18      follow-up questions about the letter that came to the AEMC;  
19      is that right?

20       **A.** Yes, sir.

21       **Q.** And the jury's already seen that.

22       **A.** Yes, sir.

23       **Q.** And they've already seen that's on letterhead.

24       (Defendant's Exhibit 1161 was referenced.)

25       **Q.** Mr. Phillips, I want to show you what's been admitted as

1 Defense Exhibit 1161.

2 MR. ESSIG: Will you pull that up, please, Sam? And,  
3 Sam, if you'll go to the very last page, please. Actually,  
4 Sam, if you'll begin, go to the second -- actually, the --  
5 well, page 2.

6 Q. In the middle of page, Mr. Phillips, this is the  
7 beginning of an email exchange. Am I right that that's an  
8 email exchange between Trey Glenn and yourself? Is that  
9 right?

10 A. Yes, sir, it appears to be.

11 Q. That's January 8 of 2014. That's over a year prior to  
12 these meetings at Balch where you saw Oliver Robinson and  
13 there were meetings about community engagement; is that  
14 right?

15 A. Yes, sir.

16 Q. And Trey Glenn -- we already talked about this -- he was  
17 sort of your partner, somebody you worked with there at  
18 SE+C and Strada; is that right?

19 A. Yes, sir.

20 Q. All right. And the subject of this is "2014" -- it's  
21 "2014/01/08." That's January 8, 2014; is that right?

22 A. Yes, sir.

23 Q. The subject is "SEC Action Items," and the email is  
24 marked confidential; is that right?

25 A. Yes, sir.

1 Q. If we read this email, it's an email you received, and  
2 it's an email from your partner, Trey Glenn; is that right?

3 A. Yes, sir.

4 Q. And if you'll just kind of very quickly glance -- well,  
5 you don't have a copy of it in front of you. I apologize.

6 So let's go to page 3. And if you see there, sort of  
7 two thirds of the way towards the top, the term "proactive  
8 outreach." Do you see that term?

9 A. Yes, sir.

10 MR. ESSIG: Sam, pull out of that, please.

11 Q. You see the next thing down is "Targets" just below  
12 that, the next heading?

13 A. Yes, sir.

14 Q. What we're talking about here is community outreach; is  
15 that right?

16 A. Correct.

17 Q. What we're talking about here is community engagement;  
18 is that right?

19 A. Yes, sir.

20 Q. If you'll go over to page 3.

21 MR. ESSIG: Sam, if you will highlight sort of from  
22 "NBCC" down to the bottom of those bullet points there.

23 Q. NBCC, that's the North Birmingham Community Coalition;  
24 is that right?

25 A. Yes, sir.

1 Q. You came to learn in your work on this, did you not,  
2 that the NBCC was a community coalition that was funded by  
3 the EPA? Is that right?

4 A. I ultimately learned that, yes.

5 Q. Okay. And they were a grassroots neighborhood group?

6 A. Yes, sir.

7 Q. Something that commonly exists in these types of  
8 matters; is that right?

9 A. Yes, sir.

10 Q. Let's go down and let's look at those bullets there.  
11 First one is "Catrena." Is that a reference to Catrena  
12 Norris Carter?

13 A. Yes, sir, it is.

14 Q. And for Catrena, it says she's going to "go to all the  
15 meetings, talk to everyone she can, try to be part of the  
16 effort (maybe redevelopment angle), deliver NBCC message,  
17 and find out what Alice Gordon is door-to-door." Is that  
18 right?

19 A. Correct.

20 Q. Would it be fair to say that Ms. Carter's role in  
21 community outreach for SE+C for Balch and Drummond was  
22 basically go to the NBCC meetings, take notes on what she  
23 heard or saw, and report back to you guys? Is that right?

24 A. Yes, sir, and other meetings.

25 Q. Right. But go to meetings, hear what people are saying,

1 write them down, report back to y'all; is that right?

2 A. Yes, sir.

3 Q. Isn't it true that Ms. Carter was not creating reports  
4 that were then going to the client?

5 A. That's -- I don't believe so.

6 Q. The information going to the client was not some robust  
7 document that outlined what they were finding out, was it?

8 A. Oh. No, sir.

9 Q. And she wasn't going out putting out fliers, was she?

10 A. No, sir.

11 Q. She wasn't going and knocking on doors and talking to  
12 people in the neighborhoods, was she?

13 A. No, sir.

14 Q. She was one person going to meetings, taking notes, and  
15 then reporting back to you so you can report to the client;  
16 is that right?

17 A. Yes, sir.

18 Q. Now let's go to the second bullet point. You see that?  
19 It says "Edmund (maybe Oliver Robinson)."

20 A. Yes.

21 Q. And Oliver Robinson, that's the same Oliver Robinson  
22 we're talking about here today; is that right?

23 A. Yes, sir.

24 Q. Okay. And what is contemplated there is grassroots  
25 outreach effort.

1     A. Yes, sir.

2     Q. And grassroots outreach effort, that's not what  
3     Ms. Carter was doing. That's more like what I just  
4     described, right?

5     A. Yes, sir.

6     Q. Go out in the community, go door-to-door, "Hey, let me  
7     talk to you about what EPA is doing," right?

8     A. Yes, sir.

9     Q. "EPA is going to take samples. Maybe one of the things  
10    you ought to do is let us take a split sample," right?

11    A. Yes, sir.

12    Q. That's exactly what you wanted the grassroots effort to  
13    be, right?

14    A. Yes, sir.

15    Q. Okay. And then the rest of that says "This will likely  
16    come later, but since Alice Gordon is going door-to-door to  
17    hand out information, we could create our own info to go  
18    door-to-door with." Is that right?

19    A. Yes, sir.

20    Q. So based on these bullet points, the contemplation by  
21    SE+C in January of 2014, a year prior to the Oliver  
22    Robinson appearance, was Catrena will go to meetings; that  
23    will be supplemented by maybe Oliver Robinson doing a  
24    grassroots community outreach effort; is that right?

25    A. Yes, sir. But it was in the context of a brainstorming

1 session on the beginning of the project, yes, sir.

2 Q. Right. But, I mean, when you sat here and you figured  
3 out grassroots, Edmund, that references Edmund Waters; is  
4 that right?

5 A. Yes, sir.

6 Q. And who is he?

7 A. He's the owner of Strada.

8 Q. Okay. But you mean Strada, you've got like four or five  
9 people primarily is sort of the makeup of Strada; is that  
10 right?

11 A. More about 20 people.

12 Q. Okay. I mean, Mr. Glenn testified -- tell me if this is  
13 correct or not. Y'all don't have sort of a section of the  
14 company that exists that does community outreach; is that  
15 right?

16 A. No, sir, we don't.

17 Q. You contract that out; is that right?

18 A. Yes, sir.

19 Q. And so in January of 2014, it was contemplated very  
20 early on in a brainstorming session that Oliver Robinson  
21 could be used as a grassroots outreach effort to supplement  
22 what Ms. Carter was doing; is that right?

23 A. Yes.

24 Q. And that would have made perfect sense to you; isn't  
25 that right, Mr. Phillips?

1     A. Yes. Grassroots, yes, sir.

2     Q. And one of the reasons that would make perfect sense to  
3     you is some of the work that SE+C and Strada did was for  
4     the Birmingham-Jefferson County Transit Authority; is that  
5     right?

6     A. Yes, sir.

7     Q. And you also did some work for the City of Birmingham;  
8     is that right?

9     A. Yes, sir.

10    Q. Am I correct that as a part of the Birmingham-Jefferson  
11    County Transit Authority, there was some work that involved  
12    with the Birmingham Airport Authority in that as well? Is  
13    that right?

14    A. Yes, sir, the airport authority.

15    Q. And you were aware, as Mr. Glenn was aware, that during  
16    the scope of that work, that Oliver Robinson's business  
17    actually did community outreach on the Birmingham airport  
18    project. You were aware of that, correct?

19    A. He actually had worked with Birmingham Airport Authority  
20    before he worked with us on the airport authority, yes,  
21    sir.

22    Q. Right. Doing community outreach?

23    A. Yes, sir.

24    Q. Did y'all actually hire Oliver Robinson to do community  
25    outreach on the Birmingham airport project?

1       A. We were on the same team with AECOM for the master plan.

2       Q. Okay. So, again, I understand some of these things, you  
3       may forget things, you may not remember things, but the  
4       truth is in January of 2014, you were having discussions  
5       and emails with Scott Phillips about Oliver Robinson doing  
6       community engagement, grassroots effort to supplement  
7       Catrena Norris Carter on this project; is that right?

8       A. We were having conversations about grassroots outreach  
9       and Oliver Robinson's firm being a possible provider of  
10      that, yes.

11      Q. As a matter of fact, in this email, he's the only  
12      possible provider that you mention.

13      A. And Edmund.

14      Q. Right. But again, Edmund, the firm itself does not have  
15      the resources to do community outreach. You had to hire  
16      somebody to do it door-to-door work, correct?

17      A. Correct.

18      Q. And the person contemplated being hired here is Oliver  
19      Robinson; is that right?

20      A. Possibly.

21      Q. I mean, is there any other possibility listed?

22      A. Not listed, but it does say maybe.

23      Q. Okay. Now, let's back up and let's go back to --

24           THE COURT: Let's stop here, please, since you're at a  
25      good transition point.

1       Members of the jury, let me give you a 15-minute break.  
2       Please do not talk about the case during the break. And if  
3       you leave the jury room, let me know if anyone approaches  
4       you about this case. Thanks, everyone.

5       (The following proceedings were had in open court  
6       outside of the presence and hearing of the jury.)

7           THE COURT: Mr. Phillips, you may step down, sir. You  
8       are precluded from talking to anyone about your testimony  
9       during the break. Thank you.

10          THE WITNESS: Yes, sir. Thank you.

11          THE COURT: 15 minutes everyone.

12          (Recess.)

13       (The following proceedings were had in open court in the  
14       presence and hearing of the jury.)

15          THE COURT: Mr. Essig, your witness.

16          MR. ESSIG: Thank you, Your Honor.

17          Q. Mr. Phillips, let's go back to Defendant's Exhibit 1161,  
18       and let's go back to the very last page, please.

19          MR. ESSIG: And if we can zoom in, Sam, on those bullet  
20       points again.

21          Q. Now, Mr. Phillips, we talked about the fact that when  
22       SE+C or Strada engages in community engagement, one of the  
23       things you frequently do is you hire a third party to do  
24       the community engagement; is that right?

25          A. Yes, sir.

1 Q. Okay. To do the grassroots efforts; is that right?

2 A. Yes, sir. Under our direction, yes, sir.

3 Q. And you had actually, again, if I understand correctly,  
4 had previously hired Oliver Robinson to do that work?

5 A. No, sir.

6 Q. Okay. You had worked with him to do that work?

7 A. Yes, sir, we worked on a team at the airport.

8 Q. And the way that works is for somebody like Catrena or  
9 anybody else that you partner with is that your  
10 relationship as the consultant with the client, you're the  
11 prime contractor, right?

12 A. Correct.

13 Q. And then if you go out and you then contract with  
14 somebody to do community outreach, that community outreach  
15 person is the subcontractor; is that right?

16 A. Yes, sir.

17 Q. And basically you manage that work; invoices get  
18 submitted to you; you then invoice the client. Is that  
19 right?

20 A. Yes, sir.

21 Q. You would actually get paid for that community outreach  
22 effort; is that right?

23 A. Yes, sir.

24 Q. Isn't that exactly what's being contemplated here in  
25 Defendant's Exhibit 1161 on Number 2, that Edmund would

1 supervise Oliver Robinson as the subcontractor for  
2 community outreach effort?

3 A. Well, what's being contemplated there is seeing if  
4 Robinson & Robinson could be the subcontractor.

5 Q. Right. Right. But y'all would get paid for the work  
6 they were doing and then y'all would pay them; is that  
7 right?

8 A. Yes, sir.

9 MR. ESSIG: Let's go back to page 2 of the document.  
10 And what I want to do is I want to go up and just  
11 highlight -- page 3. I apologize, Sam. Highlight the  
12 general messages there.

13 Q. And what you're articulating here, even though this is a  
14 communication between you and Trey Glenn, what you're  
15 articulating is what you understand the client's message to  
16 be; is that right?

17 A. Well, this is really notes from a discussion, a broader  
18 discussion with David Moore.

19 Q. Okay.

20 A. But that's what was being discussed, yes.

21 Q. And David Moore was a partner at the time at Balch &  
22 Bingham; is that right?

23 A. Yes, sir.

24 Q. In the Atlanta office. Is that right?

25 A. Yes, sir.

1 Q. This was a discussion with David Moore that didn't  
2 involve Steve McKinney, Joel Gilbert or David Roberson; is  
3 that right?

4 A. That's correct.

5 Q. And point 1 under "General Message" is "To EPA and ADEM,  
6 we are not going to go down without a fight"; is that  
7 right?

8 A. Yes, sir.

9 Q. And nothing wrong with an industry that's been named a  
10 PRP by the EPA, nothing wrong with them fighting, right?

11 A. Yes, sir.

12 Q. And it says you aren't going to use the novel air  
13 deposition theory; is that right?

14 A. Yes, sir.

15 Q. And your position was and Balch's position was, is that  
16 air deposition couldn't support their liability in 35th  
17 Avenue; is that right?

18 A. It couldn't support the analyticals that were on  
19 35th Avenue.

20 Q. And you as a scientist agreed with that?

21 A. Yes, sir.

22 Q. And then they say "We don't think we are to blame for  
23 this"; is that right?

24 A. Yes, sir.

25 Q. And their position basically was, "Even if there's

1 pollution in North Birmingham, 35th Avenue, we're not  
2 responsible for it," right?

3 A. Yes, sir.

4 Q. And then it says, that last line of that first bullet  
5 point in the last two sentences, "We are good actors"?

6 A. Yes, sir.

7 Q. "Like you, we would love to see this area redeveloped";  
8 is that right?

9 A. Yes, sir.

10 Q. So general message number 1 was, "We're not responsible  
11 for pollution in the community, but maybe we can talk about  
12 redevelopment"?

13 A. Yes, sir.

14 Q. And I think that's consistent with general message  
15 number 2; is that right? "We support" -- last line. "We  
16 support redeveloping your community. We just didn't cause  
17 the pollution."

18 A. Yes, sir.

19 Q. And that was a merited position for Balch & Bingham to  
20 take?

21 A. Yes, sir.

22 Q. And you agree with me, Mr. Phillips, that if you flip  
23 back through this email, we go to the first page of this  
24 email, the only person from Balch that's included in this  
25 email chain is Mr. David Moore, a partner in the Atlanta

1 office; is that right?

2 A. Yes, sir. Yes, sir.

3 Q. This conversation originated talking about Oliver  
4 Robinson with you and Scott Phillips, ends up in David  
5 Moore's email account at Balch, didn't involve Steve  
6 McKinney, didn't involve Joel Gilbert, and didn't involve  
7 David Roberson; is that right?

8 A. That's correct.

9 Q. I'm going to show you what's been marked Government's  
10 Exhibit 153, Mr. Phillips, which you were shown on direct  
11 examination. Okay. So if we read this in context of the  
12 January 2014 email discussion between you and Scott  
13 Phillips, let's start with the bottom email. It's from  
14 Joel to you, "Scott" -- would you read that for us, please?

15 A. "Scott, one thing that Trey had mentioned in passing and  
16 I thought we might discuss yesterday was Catrena's efforts  
17 and" -- do you want me to -- oh.

18 Q. Please continue.

19 A. -- "and also the report you, Catrena, David, and I  
20 discussed a couple months ago."

21 Q. I think her name is spelled wrong twice in that  
22 sentence, but that's Catrena Norris Carter; is that right?  
23 That's who you're talking about?

24 A. Yes, sir.

25 Q. And it says "Again, Mr. Gilbert" -- we start the next

1 line -- "let's try to revisit this issue soon so we can  
2 begin developing an action plan involving her and  
3 coordinating with Oliver"; is that right?

4 A. Yes, sir.

5 Q. And that is perfectly consistent with the email  
6 discussion you and Trey Glenn had had back in January of  
7 2014; is that right?

8 A. That's unrelated to the conversation that we had in  
9 January of 2014.

10 Q. It is unrelated?

11 A. Yes, sir.

12 Q. The January 2014 email talks about community engagement,  
13 right, talks about a grassroots effort?

14 A. Yes, sir.

15 Q. Okay. Would you please read to me the subject line of  
16 this email?

17 A. "North Birmingham Community Activities."

18 Q. Okay. And you agree that at some point it was going to  
19 be necessary not just to have somebody go sit at meetings  
20 and listen, but to actually do a door-to-door grassroots  
21 outreach activity? You thought that would be important in  
22 North Birmingham, did you not?

23 A. That was one of the options, yes, sir --

24 Q. Okay.

25 A. -- if there was a cleanup to move forward.

1 Q. Okay. And even in terms of getting comments on the NPL,  
2 that would require some door-to-door work?

3 A. It could, yes, sir.

4 Q. All right. And are you aware that Oliver Robinson  
5 actually did door-to-door work in North Birmingham, the  
6 35th Avenue area?

7 A. No, sir, I'm not.

8 Q. You're not aware that he went out in December and  
9 January of 2014 and 2015 and got a hundred comment letters  
10 from citizens?

11 MS. MARK: Objection, Your Honor. That's facts not in  
12 evidence.

13 MR. ESSIG: Facts are in evidence, Your Honor.

14 MS. MARK: I disagree.

15 THE COURT: I'll give Mr. Essig some leeway. It's  
16 cross-exam.

17 Q. (BY MR. ESSIG:) Are you aware of that fact?

18 A. I knew there were letters. I didn't know where they all  
19 had come from.

20 Q. Okay. Were you aware that there were a hundred  
21 letters that were submitted --

22 THE COURT: He's already answered. He said he knew  
23 there were letters.

24 Q. (BY MR. ESSIG:) But North Birmingham community  
25 activities, based on what we saw in January of 2014, what

1 had been contemplated for Oliver Robinson and community  
2 activities was grassroots outreach; is that right?

3 A. Was a possibility, yes, sir.

4 Q. And by this point in time, as we heard from your grand  
5 jury testimony, you had been in a meeting at Balch &  
6 Bingham to discuss community outreach where Oliver Robinson  
7 was present; is that right?

8 A. Yes, sir.

9 Q. Is it still your testimony that as of February 25, 2015,  
10 that you had no idea of the concept of Oliver Robinson  
11 being involved in community outreach in North Birmingham?

12 A. Not that he was involved outside of being a legislator,  
13 no, sir.

14 Q. So you stand by that testimony on direct examination?

15 A. Yes, sir.

16 Q. And you say outside as being a legislator. Okay.  
17 Again, going back to your grand jury testimony -- well, let  
18 me back up and ask you this. You went to multiple meetings  
19 at Balch; is that right?

20 A. Yes.

21 Q. Multiple meetings where Joel Gilbert, David Roberson and  
22 Steve McKinney were present; is that right?

23 A. Yes, sir.

24 Q. And went to multiple meetings where Oliver Robinson was  
25 present; is that right?

1     **A.** Two. Yes, sir.

2     **Q.** Just so we're clear, too, when you went to those  
3 meetings at Balch & Bingham, just like anybody else, you  
4 walked in the bottom of the building, walked through the  
5 lobby, fair, of the building; is that right?

6     **A.** Yes, sir.

7     **Q.** Pressed the elevators, got on the elevator; is that  
8 right?

9     **A.** Yes, sir.

10    **Q.** And to get to Balch & Bingham to go to that public  
11 space, you rode up to the 15th floor.

12    **A.** Yes, sir.

13    **Q.** That's where Balch's receptionist is?

14    **A.** Yes, sir.

15    **Q.** That's where their public meeting space is?

16    **A.** Yes, sir.

17    **Q.** And that's where these meetings were?

18    **A.** Yes, sir.

19    **Q.** And so is it your testimony under oath that in those  
20 meetings, that Mr. Gilbert, Mr. McKinney, or Mr. Roberson  
21 ever said to you, "Hey, here's Oliver Robinson. He's here  
22 as a legislator from the North Birmingham area"? Is it  
23 your testimony that they said that?

24    **A.** It's my testimony that he said that he was at those  
25 meetings to support what was going forward for the

1 community.

2 Q. Okay. All right. So no one ever said, "Hey, this is  
3 Oliver Robinson. He's here as a legislator for the North  
4 Birmingham area"?

5 A. No, sir.

6 Q. Okay. Nobody ever actually said that?

7 A. No, sir.

8 Q. And he said he was there for the community; is that  
9 right?

10 A. In support of the community.

11 Q. In support of the community. Okay.

12 A. Yes, sir.

13 Q. Typically, people that are doing community outreach are  
14 doing community outreach in support of the community; is  
15 that right?

16 A. Yes, sir.

17 Q. As a matter of fact, community outreach comes in phases  
18 oftentimes?

19 A. Yes.

20 Q. First phase might mean you go out, you survey the  
21 community, "Hey, guys, what's important to you?" Right?

22 A. Yes, sir.

23 Q. Okay. And then maybe after you figure out what's  
24 important to them, if it's an EPA matter, might find some  
25 people that like EPA; is that right?

1 A. Yes, sir.

2 Q. Might find some people that don't like the EPA?

3 A. That's right.

4 Q. And once you figure that out and you figure out which  
5 people do support you and which people do not support you,  
6 that's how you know who will sign an affidavit or a comment  
7 letter; is that right?

8 A. Yes, sir.

9 Q. You go back to those people that supported you when you  
10 surveyed them and you had them do the comment letter; is  
11 that right?

12 A. Yes, sir, for support.

13 Q. And that process could take place in a number of phases,  
14 and that process can take a long time; is that right?

15 A. Yes, sir.

16 Q. That process can be very expensive; is that right?

17 A. Yes, sir.

18 Q. So again, it's your testimony, Mr. Phillips, that as of  
19 the time of Oliver Robinson's appearance before the AEMC,  
20 that you had no idea of the concept of Oliver Robinson  
21 being involved in community engagement in North Birmingham  
22 for Balch & Bingham; is that your testimony?

23 A. Yes, sir.

24 Q. These meetings that we talked about, though, and these  
25 emails that we talked about, you've all seen they predate

1 the February 20, 2015 AEMC agreements; is that right?

2 A. I think one did. I thought the other one was after  
3 that.

4 Q. January 14 -- January 2014, that predates, doesn't it?

5 Is that right?

6 A. Yes, sir.

7 Q. Okay. The February 12, 2015 email we just looked at, it  
8 talked about getting Catrena Norris Carter and Oliver  
9 together?

10 A. Yes, sir.

11 Q. That's February 12, 2015, right?

12 A. Yes, sir.

13 Q. We already talked about the fact that your meeting  
14 regarding community engagement where Oliver Robinson was  
15 present was prior to February 20, 2015; is that right? I  
16 think you said you got those confused.

17 A. Yeah, I think the meeting was after that, after the  
18 20th. To introduce him to Lanier Brown was before.

19 Q. Okay. All right. So let me ask you this, Mr. Phillips.  
20 You had a contract with Balch & Bingham as a consultant at  
21 SE+C and Strada; is that right?

22 A. Yes, sir.

23 Q. And as part of that contract -- and do you understand  
24 that what Balch & Bingham provided to your firm was their  
25 standard consulting agreement?

1 A. That was my understanding, yes, sir.

2 Q. And in that standard consulting agreement, Balch &  
3 Bingham included a provision that required you to follow  
4 the law; is that correct?

5 A. Yes, sir.

6 Q. And at the time, that was important because you were  
7 actually a public official on the AEMC; is that right?

8 A. Yes.

9 Q. And as a public official on the AEMC, the rule for you  
10 was you could not vote or take action on a matter that  
11 involved something that you were consulting on; is that  
12 right?

13 A. Yes, sir.

14 Q. You understood that to be your duty?

15 A. Yes, sir.

16 Q. But the day Oliver Robinson came and spoke in front of  
17 the commission, you certainly knew those comments were  
18 related to the 35th Avenue Superfund Site; is that right?

19 A. Yes. Yes, sir.

20 Q. But there was no problem with you sitting in the  
21 committee room or the commission room and listening to that  
22 speech, was there?

23 A. No, sir.

24 Q. And the reason there was no problem with you sitting in  
25 there was because there was no rules or regs for the AEMC

1 to consider on the 35th Avenue site, was there?

2 A. That's correct.

3 Q. There was no issue, no rules or regs for the AEMC to  
4 consider regarding the Tarrant GASP petition on that day,  
5 was there?

6 A. Yes, sir. Yes, sir.

7 Q. And there had been no appeal by anyone of any ruling or  
8 any decision that ADEM or AEMC had made on that issue, was  
9 there?

10 A. That's correct.

11 Q. And certainly the day that Oliver Robinson came in  
12 there, he didn't ask you to fire Lance LeFleur, did he?

13 A. No, sir.

14 Q. He didn't ask you to take any action against Lance  
15 LeFleur at all, did he?

16 A. No, sir.

17 Q. So if I'm correct, those are the three ways the  
18 commission acts. You hire and fire Lance LeFleur; is that  
19 right?

20 A. Yes, sir.

21 Q. You implement rules and regulations; is that right?

22 A. Yes, sir.

23 Q. You make decisions on appeals based on something ADEM or  
24 AEMC has done; is that right?

25 A. Yes, sir.

1 Q. That's the only way that the AEMC takes official action;  
2 is that right?

3 A. That's correct.

4 Q. And those are the only matters on which the AEMC can  
5 take official action per its authority; is that right?

6 A. Yes, sir.

7 Q. None of those matters was pending before the AEMC on  
8 that particular day when Oliver Robinson showed up; is that  
9 right?

10 A. No, sir, they weren't.

11 Q. And that is the reason you were able to sit in there and  
12 still comply with the Balch & Bingham contract; is that  
13 right?

14 A. Yes, sir.

15 Q. And you were able to comply with the follow-the-law  
16 provision; is that right?

17 A. Yes, sir.

18 Q. And Oliver Robinson when he stood in there that day and  
19 when he spoke, I think you made the motion to allow him to  
20 speak; is that right?

21 A. I don't recall, but I may have.

22 Q. If the video reflects that that's been shown to the  
23 jury, you wouldn't disagree that, would you?

24 A. No, sir.

25 Q. And all that is, though, is making a motion so a man can

1 stand up and give a speech.

2 A. Public comment.

3 Q. Right. And as a result of the speech that Oliver  
4 Robinson gave, the AEMC didn't take any action against  
5 Lance LeFleur, did they?

6 A. No, sir.

7 Q. As a matter of fact, there was no action for AEMC to  
8 take on the 35th Avenue matter, was there?

9 A. No, sir.

10 Q. And AEMC, as a result of Oliver Robinson's speech,  
11 didn't go to Lance LeFleur and tell him to change his  
12 position, did they?

13 A. No, sir.

14 Q. The body as a whole never did that, did they?

15 A. No, sir.

16 Q. As a matter of fact, as a result of this appearance, the  
17 AEMC as a body didn't do a thing, did they?

18 A. They did not.

19 Q. So at the end of the day, as it relates to being a  
20 member of the commission, of the AEMC, Oliver Robinson's  
21 speech had no impact whatsoever?

22 A. No, sir.

23 MR. ESSIG: No further questions.

24 THE COURT: Who's up next?

25 MR. GILLEN: I am, Your Honor.

1           THE COURT: You may come forward, Mr. Gillen.

2           MR. GILLEN: Thank you, Your Honor.

3           CROSS-EXAMINATION BY MR. GILLEN:

4           Q. Good afternoon, Mr. Phillips.

5           A. Good afternoon.

6           Q. My name is Craig Gillen. I'm one of the attorneys  
7 representing Mr. McKinney. I want to follow up a little  
8 bit where counsel left off.

9           (Government's Exhibit 145 was referenced.)

10          MR. GILLEN: If we can take a look at Government's 145,  
11 please.

12          Q. Now, do you have that in front of you?

13          A. Yes, sir, I do.

14          Q. Do you recognize this Government's 145 at the top? This  
15 is an email from you to Trey Glenn. This is way back on  
16 October 31, 2013, correct?

17          A. Yes, sir.

18          Q. And this has to do with the draft agreement between  
19 Balch and SEC, correct?

20          A. Yes, sir.

21          Q. Now, what happens is --

22          MR. GILLEN: If you can take that out, the header off  
23 just a sec.

24          Q. What I'd like you to do is let's focus in on point  
25 number 2. "We need to be sure that my role on commission

1     meets their requirements and the law, including the ethics  
2     law, and that we prevent -- and the appropriate process and  
3     procedure is to document this," correct?

4     **A.** Yes, sir.

5     **Q.** So what you wanted to make sure is that if there was  
6     anything that required you as a commissioner to recuse  
7     yourself or to disclose your relationship with Balch or  
8     with Drummond, that you felt like you'd be able to do that,  
9     correct?

10     **A.** Yes, sir.

11     **Q.** Because as we'll go in and Mr. Essig went into in some  
12    detail, at the end of the day, you were present and  
13    actually moved to permit Mr. Robinson to speak before the  
14    commission for less than 10 minutes on February 20, 2015,  
15    correct?

16     **A.** Yes, sir.

17     **Q.** Okay. And so that was on your mind when you and  
18    Mr. Glenn were dealing with Balch and Drummond concerning  
19    representation, correct?

20     **A.** Yes, sir.

21     **Q.** Now, one of the things that -- you remember that  
22    actually Mr. Glenn is the one who sort of pitched trying to  
23    get the work to Drummond -- from Drummond and Balch,  
24    correct?

25     **A.** Yes.

1 Q. So this isn't a situation where Mr. Gilbert or  
2 Mr. McKinney or anybody else from Balch or from Drummond  
3 went out and said, "Gee, we want to get Mr. Phillips and  
4 Mr. Glenn" for whatever reason. This is Mr. Glenn saying,  
5 "We want that business," right?

6 A. Yes, sir.

7 Q. Nothing wrong with that, but that's the way it worked,  
8 correct?

9 A. Yes, sir.

10 Q. So my point being is it's not a situation where someone  
11 was saying, "Hey, let's go hire Strada or SEC because  
12 they've got Trey Glenn and they've got Scott Phillips, who  
13 happens to be the vice chair of the EMC," correct?

14 A. Yes, sir.

15 Q. And so you and Mr. Glenn decided, "Hey, let's try and  
16 get this business. This will be good work." Right?

17 A. Yes, sir.

18 Q. And so what you do is you then go through the process of  
19 having a contract which is in --

20 MR. GILLEN: If we can take a look at Government's 146,  
21 please.

22 Q. And this is the contract agreement between Balch &  
23 Bingham and SEC Engineering; is that correct?

24 A. Yes, sir.

25 Q. All right. And now, I apologize. If we can go back to

1       145 quickly. I jumped the gun a little bit on this one.  
2       If we can go down to the bottom here, the bottom comment,  
3       Mr. Glenn is saying to you "Can I get your quick feedback  
4       on this draft agreement? I'm trying to get ready for ABC  
5       to engage us through Balch. This is a standard agreement  
6       between Balch and its consultants." Do you see that?

7       A. Yes, sir, I do.

8       Q. And so what he's saying is, "What we're going to do is  
9       we're going to have a situation where ABC Coke, Drummond,  
10      will be hiring y'all, but it will be through Balch,"  
11      correct?

12      A. Yes, sir.

13      Q. And there was nothing wrong in your mind or Mr. Glenn's  
14      mind about that process occurring, correct?

15      A. No, sir.

16      Q. Nothing wrong, standard business, right?

17      A. Yes, sir.

18      Q. For the law firm to be hiring a consultant --

19      A. Yes, sir.

20      Q. -- through an engagement letter, correct?

21      A. Yes, sir.

22      Q. Which is what happened here, correct?

23      A. Yes, sir.

24      Q. So let's look at, if we can, back to Government's 146.  
25      And this is the agreement that was signed, correct?

1       A. It appears to be. I don't see a signature.

2           MR. GILLEN: Let's move to page 4 of that, please.

3       Now, in page 4, if we can blow up the first paragraph there  
4       on "Confidentiality."

5       Q. Now, this is part of the contract that you and Mr. Glenn  
6       had with Balch, correct, or your company did, right?

7       A. Yes, sir.

8       Q. It says "Confidentiality. The consultant shall not  
9       without prior written consent of Balch disclose to any  
10      person confidential, proprietary, or other information  
11      concerning the business, financial, or other affairs of  
12      Balch or its clients (Balch confidential information)."  
13      Standard language, correct?

14     A. Yes, sir.

15     Q. "Moreover, the consultant shall use its best efforts to  
16      prevent the publication or disclosure by anyone else of any  
17      Balch confidential information." Standard information,  
18      correct?

19     A. Yes, sir.

20     Q. "Consultant agrees that all communications between  
21      consultant and Balch shall remain confidential and shall  
22      not be divulged to third parties except to the extent  
23      compelled by legal process or to the extent Balch  
24      authorizes disclosure in advance." Do you see that?

25     A. Yes, sir.

1 Q. Standard language, isn't it?

2 A. Yes, sir.

3 Q. Okay. "The existence of this agreement shall also be  
4 kept confidential by consultant." Standard language, isn't  
5 it?

6 A. Yes, sir.

7 Q. "Consultant shall not disclose the existence of any  
8 terms of the agreement without the prior written consent of  
9 Balch except to the extent that there's a legal obligation  
10 to do so or to the extent necessary to object to a demand  
11 by a third party for disclosure of same. This obligation  
12 of confidentiality shall survive the termination of this  
13 agreement." All standard language, correct?

14 A. Yes, sir.

15 Q. So under this particular confidentiality provision, if  
16 you felt like you had to make some sort of disclosure about  
17 your company's relationship with Balch or with Drummond,  
18 then you could certainly do this because if it would be  
19 directed or provided by law, then you would be permitted to  
20 do that, right?

21 A. Yes, sir.

22 Q. In other words, if the law says I've got to disclose,  
23 then, you know, this allows you to disclose, correct?

24 A. Yes, sir.

25 Q. If we can turn to page 5, "Compliance with laws," it

1 says, "Compliance with laws. Consultant shall comply with  
2 the requirements of all applicable laws, rules, and  
3 regulations and orders of any federal, state, or local  
4 governmental authority. In particular but not in  
5 limitation of the foregoing sentence, consultant shall  
6 comply with any and all filings and requirements of the  
7 FCPA and the Alabama Code of Ethics 1973 as amended and all  
8 other applicable federal, state, and local laws, rules, and  
9 regulations." Correct?

10 A. Yes, sir.

11 Q. So what it's saying here is that -- and this is standard  
12 language, isn't it?

13 A. Yes, sir.

14 Q. And what this language does would then if you felt like,  
15 "Gee, you know, I've got a conflict here," then you would  
16 then say, "Well, I'm going to comply" -- if I feel that I  
17 must with the ethical requirements, I would disclose my  
18 relationship with Drummond or with Balch, correct?

19 A. Yes, sir.

20 Q. And that's one of the concerns that you had when you  
21 were talking about making sure that you could do that,  
22 correct?

23 A. Yes, sir.

24 Q. Now, what happens, and we're going to spend some time  
25 going through some of your direct testimony, but we'll kind

1 of fast-forward back to the end where counsel left off, and  
2 that is that as you went into the hearing on February 20,  
3 2015, before the commission, correct?

4 **A.** Yes, sir.

5 Q. Now, you were the vice chair, correct?

6 **A.** Yes, sir.

7 Q. You had moved for Mr. Robinson to be permitted to speak,  
8 correct?

9 **A.** Yes, sir.

10 Q. So you actually took an official, you know, step there  
11 by making that motion, correct?

12 **A.** Yes, sir.

13 Q. Okay. And it was seconded, and they said, "Sure, go  
14 ahead and speak," correct? Correct?

15 **A.** Yes, sir.

16 Q. Now, at that time, as of February 20, 2015, you had  
17 already met Mr. Robinson in the hallway of Balch on  
18 February 11, 2015, correct?

19 **A.** Yes, sir.

20 Q. You had already had discussions with other members of --  
21 Mr. Gilbert and Mr. Roberson about the appearance before  
22 the commission, correct?

23 **A.** Yes, sir.

24 Q. You had actually been asked by Mr. Robinson to have you  
25 introduce him to the chair, correct?

1     **A.** As I recall, I said it was either Joel or David. I  
2     don't remember.

3     **Q.** You don't remember?

4     **A.** Yes.

5     **Q.** So if you don't remember, then we're not going to ask  
6     you to -- this isn't the place to be speculating or  
7     guessing. So you don't know?

8     **A.** No, sir.

9     **Q.** But what you do know is someone asked you to make that  
10    introduction, correct?

11    **A.** Yes, sir.

12    **Q.** So you were aware that the meeting up there at Balch was  
13    about community outreach, correct?

14    **A.** I wasn't aware of what the meeting was about.

15    **Q.** But you agreed to an introduction, correct?

16    **A.** Yes.

17    **Q.** That introduction took place on February 18, 2015,  
18    correct?

19    **A.** Yes.

20    **Q.** At Daniel George's?

21    **A.** Yes.

22    **Q.** And you're the one who then -- the vice chair,  
23    Mr. Phillips, is introducing Oliver Robinson to the chair,  
24    Mr. Brown, correct?

25    **A.** Yes, sir.

1 Q. And there was discussion about Mr. Robinson's appearance  
2 that would be coming up before the commission on the 20th,  
3 correct?

4 A. Right. Public comment.

5 Q. All right. Public comment. So you were aware that  
6 there had been that discussion. You were aware obviously  
7 that your company was -- had been engaged since 2013  
8 working on behalf of Drummond and on behalf of Balch on  
9 this very complicated procedure, correct?

10 A. Yes, sir.

11 Q. And so but, again, the reason why you felt as though you  
12 need not even disclose your relationship with Balch or with  
13 Drummond is that there was nothing going on there at the  
14 hearing, correct?

15 A. That's correct.

16 Q. As we discussed, there was no vote, correct?

17 A. That's correct.

18 Q. There was no pending resolution, correct?

19 A. That's correct.

20 Q. There was nothing that caused you as the vice chair of  
21 the commission, who had been employed through the company  
22 with Balch and Drummond since 2013, to either disclose that  
23 relationship or to recuse yourself, correct?

24 A. That's correct.

25 Q. And if you did think that was the case, that's what you

1 would have done, right?

2 A. Yes, sir.

3 Q. So if you thought that there was anything pending before  
4 that commission that had to do with Mr. Robinson's  
5 appearance on the 20th that touched in any way on your  
6 necessity to either disclose or to recuse, you would have  
7 done that, correct?

8 A. Yes, sir.

9 Q. Because you had alerted yourself or to your partner,  
10 Mr. Glenn, way back in 2013 that you wanted to make sure  
11 that that would be addressed, correct?

12 A. Yes, sir.

13 Q. And you didn't because you didn't need to, correct?

14 A. Yes, sir.

15 Q. Now, when you were discussing on direct examination, you  
16 were talking about a meeting or discussions that you had  
17 with a number of different lawyers at Balch concerning this  
18 matter, correct?

19 A. Yes, sir.

20 Q. Many moving parts here concerning this very, very  
21 complicated matter of the 35th Avenue Superfund Site,  
22 whether it would be extended to Tarrant and also the whole  
23 National Priorities listing, correct?

24 A. Yes. Yes, sir.

25 Q. Not only very technical scientific matters, but also

1 very technical and complicated legal issues, correct?

2 A. Yes, sir.

3 Q. And what would happen is that you indicated that you on  
4 occasion would speak with Mr. McKinney, correct?

5 A. Yes, sir.

6 Q. Now, when you spoke with Mr. McKinney, you spoke with  
7 Mr. McKinney but only about issues that had to do with the  
8 technical aspects of the process that you were working on,  
9 which was the NPL listing, the data, or the extension of  
10 the Superfund site to Tarrant, correct?

11 A. Yes, sir.

12 Q. And so when you said that you would speak with him,  
13 basically you in your role as working the technical detail,  
14 highly sophisticated fact, scientific fact pattern is what  
15 you'd be communicating with Mr. McKinney about, correct?

16 A. Yes, sir.

17 (Government's Exhibit 148 was referenced.)

18 MR. GILLEN: Now, as an example, let's go to  
19 Government's 148 if we could, please.

20 Q. Now, in 148, we have -- this is an email from  
21 Mr. McKinney on June 27, 2014 to Mr. Glenn with a cc to  
22 you, correct?

23 A. Yes, sir.

24 Q. And this has to do -- the attachment, there's an  
25 attached letter. If we can just scoot to the attached

1 letter very quickly, that's a June 11, 2014 letter from  
2 Director LeFleur to the EPA, right?

3 A. Right, yes, sir.

4 MR. GILLEN: Now, if we can go back to the front of the  
5 email.

6 Q. So what we have here, if we can box up here, we can see  
7 that the comment is "See the attached letter obtained  
8 today." Which actually was two weeks after it was sent,  
9 right?

10 A. Yes, sir.

11 Q. "See attached letter obtained today. When you pursue  
12 information about this topic with ADEM personnel, please  
13 seek any documentation on the request for concurrence that  
14 exists and, in particular, any scoring of the site that has  
15 been done." Do you see that?

16 A. Yes.

17 Q. "Any scoring of the site that has been done"?

18 A. Yes, sir.

19 Q. So what Mr. McKinney is asking you to do at that time is  
20 what you're good at or what you and Mr. Glenn are good at,  
21 and that's the scientific study, correct?

22 A. Yes, sir.

23 Q. So when we talk about scoring the site, we're talking  
24 about the numbers out there that might reflect, good or  
25 bad, whether or not the data would support either extending

1 the Superfund site from 35th Avenue to Tarrant or whether  
2 or not the site, the 35th Avenue site, should be placed on  
3 the NPL list, correct?

4 A. Yes, sir.

5 Q. So that was sort of -- that's the kind of communications  
6 that you had with Mr. McKinney about this matter, correct?

7 A. Yes, sir.

8 Q. All right. Now, and what you also did, let's go to --  
9 government showed you 149.

10 MR. GILLEN: Let's go to 149 if we could, please.

11 Government's 149.

12 Q. And if we go from the back of that, there is a -- this  
13 is the September 16, Director LeFleur's email to EPA where  
14 it, you know, just jumps out at you from the page "The  
15 state did not concur. The state does not concur." Right?

16 A. That's correct.

17 Q. And then he states five reasons why: Number 1, no  
18 scientific basis; and then, Number 2, the air and land  
19 studies --

20 MS. MARK: Your Honor, I object to this on relevance.

21 MR. GILLEN: They went over this document on direct,  
22 Your Honor, and I want to go over the whole thing with him,  
23 not just the part they want to go over.

24 THE COURT: That's one way to get around it, but speed  
25 this up, please. You may continue, Mr. Gillen.

1           MR. GILLEN: Thank you, Your Honor.

2       Q. And so what happens is on Number 2, he's saying that the  
3       air and land studies performed by the U.S. Agency for Toxic  
4       Substances and Disease Registry within the Centers for  
5       Disease Control determined there's no public health hazard  
6       at 35th Avenue and, therefore, the studies do not support  
7       the listing. Do you see that?

8       A. Yes, sir.

9       Q. So what happens is, is that's forwarded to -- you get  
10      that, and then what you do is you then sort of have a draft  
11      that you wanted to discuss with Mr. Glenn about what you  
12      maybe want to send to Mr. McKinney, correct?

13      A. Yes, sir.

14     Q. And so you're saying here on page 1 "I was thinking of  
15      sending this email that's below to Steve. What do you  
16      think? Should I copy the full team?" And here in your  
17      proposed draft, what you're saying is, if we go down here  
18      to the draft, "Steve, it would seem that we need to  
19      determine mayor's position on this and see if we can get  
20      him to respond with comments to the proposed listing. I  
21      believe we have 60 days from the *Federal Register's*  
22      publication date, so we have little time, but we likely  
23      need to think through the best commenters and content of  
24      their comments."

25           You remember being asked on direct examination about

1       that by the government, correct?

2       A. Yes, sir.

3       Q. "As you know, the comments from the PRPs do not carry  
4       the same weight as those from others, comments from others.  
5       Like the mayor, the governor, city business leaders,  
6       congressional delegation, et cetera, are possible  
7       commenters that could make a difference."

8           So you're sort of -- what you're doing is running by  
9       Mr. Glenn the possibility that you -- of what you might  
10      want to suggest to Balch in terms of a protocol or a  
11      procedure to take, correct?

12     A. Yes, sir.

13     Q. And then you say "However, in my experience, unless  
14      there is significant technical argument, alternative method  
15      for a cleanup, state led or PRP led, the commenter to refer  
16      to, it would be difficult for any real pressure to have the  
17      EPA change the listing now they have announced it,"  
18      correct?

19     A. Yes, sir.

20     Q. What you're saying there is, "Hey, EPA" -- and you can  
21      tell from Director LeFleur's letter he's very upset about  
22      it -- had gone ahead and put it down, you know, as a  
23      preliminary listing, correct?

24     A. Yes, sir.

25     Q. And so what you're saying here is once they've done

1       that, you know, absent some data or something else, it's  
2       going to be difficult to get the EPA to change from that  
3       position, correct?

4       **A.**    Correct.

5       Q.     And so but you're also, you know, just to be candid, you  
6       and Mr. Glenn are also looking for maybe a little bit more  
7       business from Balch and Drummond on this issue, correct?

8       **A.**     We're proposing that we could look at the technical  
9       argument.

10      Q.     Little bit more business.

11      **A.**     Yes, sir.

12      Q.     Nothing wrong with that. I'm just saying that's what it  
13       was, right?

14      **A.**     Yes, sir.

15      Q.     And above you say "Do you want me to send or" -- "Do you  
16       want to send or do you want me to?" You see that?  
17       Correct?

18      **A.**     I do now. Yes, sir.

19      Q.     And then he responds back "Why don't you try it? I've  
20       been beating on them lately. It would probably help to  
21       come from you." Do you see that?

22      **A.**     Yes, sir.

23      Q.     What he meant by "I've been beating on them lately" is  
24       "I've been out trying to get more business from them.  
25       Maybe they ought to hear from you," right?

1 A. I don't know that that's specifically what he meant.

2 Q. That's the way you took it, though, isn't it?

3 A. I took it that the technical argument needed to come  
4 from me.

5 Q. I see. Okay.

6 THE COURT: Let's get back to Defendant Robinson and  
7 the alleged bribes or whatever else.

8 Q. (BY MR. GILLEN:) And I'd like to show you what has been  
9 marked as Government's 153. You were asked about this on  
10 direct examination. Now, let's break this down.

11 You told us that you had some meetings, and I think you  
12 described some meetings at the beginning of January of  
13 2015, correct, some meetings with Mr. Gilbert and  
14 Mr. Roberson?

15 A. I'm not sure which time frame, but I mean --

16 Q. Let me rephrase it a different way. Let's just take  
17 December of 2014. You never had a meeting with Steve  
18 McKinney where you discussed Oliver Robinson or the EMC  
19 commission meeting, did you?

20 A. No, sir, not that I recall.

21 Q. And let's move into January of 2015. Now, in January of  
22 2015, you didn't have any meetings with Steve McKinney  
23 regarding Oliver Robinson or any presentation before EMC,  
24 did you?

25 A. No, sir, not that I recall.

1 Q. Okay. Now let's move into February of 2015, February of  
2 2015. Now, you told us earlier on direct examination and  
3 some on cross that you went up to a meeting on February 11,  
4 2015 to Balch, correct?

5 A. Yes, sir.

6 Q. And that, as you may remember, you testified you saw  
7 Mr. Oliver Robinson coming out in the hallway, correct?

8 A. Yes, sir.

9 Q. You were going into a meeting with some other folks,  
10 correct?

11 A. Yes, sir.

12 Q. Mr. Gilbert and Mr. Roberson, correct?

13 A. Yes, sir.

14 Q. And you've discussed with us what Mr. Robinson said to  
15 you, and then you go into the meeting with the two  
16 gentlemen, correct?

17 A. Yes, sir.

18 Q. Not in that meeting is Steve McKinney, correct?

19 A. Yes. No, sir, he's not there.

20 Q. He's not there. So then we have some email traffic  
21 which is the next day on 153, and there is some discussion  
22 about -- you may remember this. You were asked about this  
23 in the latter part down here where you say "I need to sit  
24 down with Oliver soon as well and get feedback from him now  
25 that he has been involved for a few months and develop a

1 plan to go forward." Do you see that?

2 A. Yes, sir.

3 Q. Now, this is an issue, as cross-examination earlier  
4 pointed out, regarding the North Birmingham community  
5 activities, correct?

6 A. Yes, sir.

7 Q. Community outreach, correct?

8 A. Community activities were the subject.

9 Q. Community activities, correct?

10 A. Yes, sir.

11 Q. And so what happens is on this email, Mr. Gilbert is  
12 sending it to you, correct?

13 A. Yes, sir.

14 Q. And sending it also to Mr. Roberson, correct?

15 A. Correct.

16 Q. But, no, Mr. McKinney is not on this email, not either  
17 directly or cc'd, correct?

18 A. No, sir.

19 Q. Then there is the February 18, 2015 meeting at Daniel  
20 George's, correct?

21 A. Yes, sir.

22 Q. And again for the record, there is no Steve McKinney at  
23 that meeting, correct?

24 A. No, sir.

25 Q. There is no discussion that you had with Steve McKinney

1 about the meeting, correct?

2 A. No, sir, not that I recall.

3 Q. And then you have the day after the meeting that --  
4 between Mr. Robinson, yourself, Chairman Brown, and Trey  
5 Glenn. Then you send out a February 19 draft PowerPoint  
6 regarding community stakeholder strategy, correct?

7 A. I don't remember the date, but yes, I did.

8 Q. We'll tie it down. Government's 161.

9 A. Yes, sir.

10 Q. So you see that on the top of 161 --

11 A. Yes, sir.

12 Q. -- where you are sending -- now, as it relates to this  
13 email where you're sending out your PowerPoint that the  
14 government walked through in some detail on February 19,  
15 you did not send any cc or either direct or cc to  
16 Mr. McKinney regarding your PowerPoint presentation,  
17 correct?

18 A. Correct.

19 Q. And then what occurred on the next day, actually the day  
20 of the commission meeting, February 20, there is another  
21 email or emails regarding a potential meeting, correct?

22 Let's look at 154.

23 A. Yes. The meeting that came later.

24 Q. Yeah. Well, these emails are going out on February 20,  
25 correct?

1     A.    Correct.

2     Q.    And it has to do with a meeting that's going to be held  
3           later on concerning your PowerPoint presentation, correct?

4     A.    Correct.

5     Q.    On all of the emails back and forth, Mr. McKinney is  
6           not -- he doesn't send the email, he doesn't get the email,  
7           and he's not cc'd on any of these emails, is he?

8     A.    No, sir, he's not.

9     Q.    As a matter of fact, then you testified that there was a  
10          meeting that took place on February 25, 2015 regarding your  
11          PowerPoint presentation. Do you remember that?

12    A.    Yes, sir.

13    Q.    And without going back into all of what was said and  
14          what was done there at that meeting, the one thing that we  
15          can be very sure of is Steve McKinney was not at the  
16          meeting, was he?

17    A.    He was not.

18    Q.    Okay. And if you could take a look at 156, you were  
19          asked about this on direct examination. And here there's  
20          some email traffic in 156 on March 6, 2015 regarding  
21          community stakeholder engagement and this sort of thing,  
22          correct?

23    A.    Yes, sir.

24    Q.    And this is from Mr. Glenn to Blake Andrews, correct?

25    A.    Yes, sir.

1 Q. Blake Andrews is the general counsel for Drummond,  
2 correct?

3 A. Yes, sir.

4 Q. And also Curt Jones is also cc'd here?

5 A. Yes, sir.

6 Q. Is he a lawyer, in-house counsel at Drummond?

7 A. At Drummond, yes, sir.

8 Q. And then Mr. Gilbert and then you?

9 A. Yes, sir.

10 Q. And those are the people that were looking at the  
11 strategy that was outlined in this March 6, 2015, correct?

12 A. Yes, sir.

13 Q. Okay. And, again, down here when it talks about ADEM,  
14 community stakeholder engagement under -- that Mr. Glenn is  
15 suggesting, that under ADEM "active conversations with ADEM  
16 and EMC including NPL and PA," correct?

17 A. Yes, sir.

18 Q. And the suggestion by Mr. Glenn regarding reaching out  
19 to ADEM or EMC, you did not feel compelled to either recuse  
20 or disclose the relationship with Balch and Drummond,  
21 correct?

22 A. No, sir.

23 Q. And then you testified that there was a meeting, yet  
24 another meeting -- we've gone through a lot of them, but  
25 they all have the same theme, don't they? These meetings

1 that we have talked about on direct and on cross here, no  
2 Steve McKinney, right?

3 A. Yes, sir. In the ones you showed me, yes, sir.

4 Q. Then you talked about a meeting on April 20, 2015. Do  
5 you remember that?

6 A. Yes, sir.

7 Q. And you indicated that a number of people were present  
8 for that, and the one thing that we can be sure of is that  
9 there was no Steve McKinney at that meeting, correct?

10 A. Right.

11 MR. GILLEN: That's all I have. Thank you.

12 THE COURT: Thank you. Mr. Bloomston?

13 MR. BLOOMSTON: Yes, may it please the Court.

14 CROSS-EXAMINATION BY MR. BLOOMSTON:

15 Q. Mr. Phillips, my name is Brett Bloomston. I represent  
16 David Roberson. I just wanted to try to clear up something  
17 that I heard on your direct and your cross-examination.  
18 Regarding this meeting with Lanier Brown, you showed that  
19 you had some confusion as to whether Mr. Gilbert or  
20 Mr. Roberson may have suggested that to you. Do you  
21 remember that discourse with my --

22 A. Yes. Yes, sir.

23 Q. And you do recall giving testimony before the grand jury  
24 in March of 2017, correct?

25 A. Yes.

1 Q. And do you remember telling the grand jurors and  
2 Mr. Martin to his questioning that it was your recollection  
3 that he said "I'm going to be making a public comment.  
4 And, hey, I'd like to meet Lanier Brown. I hear he's the  
5 chairman. I haven't met him. I'd like to meet him before  
6 I come down there"? The "I" in that is referenced right  
7 after you stated that you met Oliver Robinson in the hall.  
8 Does that refresh your recollection that it was, in fact,  
9 Oliver Robinson who asked to meet Lanier Brown?

10 A. It was so long ago. I just remember being asked to  
11 introduce Oliver Robinson to --

12 Q. You don't have any reason to dispute the fact that a  
13 court reporter got down your words verbatim --

14 A. No, sir.

15 Q. -- that you spoke to the grand jury in March of 2017?

16 A. No, sir.

17 Q. Okay. Let me ask you this: Mr. Phillips, were you the  
18 president of Strada in 2014?

19 A. I don't believe I was in 2014.

20 Q. What was your position at Strada in 2014?

21 A. I was a consultant.

22 Q. Just a consultant?

23 A. Yes, sir.

24 Q. Have you become president at some point?

25 A. Yes, sir.

1 Q. Okay. Were you one of the principals involved in the  
2 Birmingham Airport Authority contract that you referred to  
3 earlier today?

4 A. I was one of the consultants on the team, yes, sir.

5 Q. And your role was as consultant. Did you have any role  
6 oversight of the community outreach part of that contract?

7 A. No, sir.

8 Q. Okay. And this contract that you -- I believe you said  
9 it was a joint venture between AECOM and Strada or SEC.

10 A. Yes, sir.

11 Q. And it was to deal with community issues dealing with  
12 the expansion of the Birmingham airport, correct?

13 A. The master plan, yes, sir.

14 Q. And community outreach in that aspect would be dealing  
15 with talking to citizens. Obviously there's noise  
16 pollution. There's physical eminent domain where the  
17 houses may get bought up for expansion. And it would be  
18 important to talk to those stakeholders about their input  
19 in that process, correct?

20 A. Yes, sir.

21 Q. And that's where community outreach would be involved in  
22 that particular project, correct?

23 A. Yes, sir.

24 Q. And in 2014, September of 2014 specifically, were you  
25 aware that AECOM and Strada had a \$95,000 community

1 outreach contract with Oliver Robinson and his business?

2 A. Yeah, Robinson & Robinson Communications.

3 Q. Okay. So you're aware and worked with Oliver Robinson  
4 in some capacity as a consultant in that AECOM joint  
5 venture that Oliver Robinson was out in the community doing  
6 community outreach programs, correct?

7 A. Yes, sir.

8 Q. Okay. And you did not have any issue with that, he  
9 being a legislator? You didn't see any problem with him in  
10 using his business for that purpose, did you?

11 A. No, sir.

12 Q. Okay. September 2014 is when that contract was signed  
13 with AECOM and Oliver Robinson through R&R Communications.  
14 And you testified earlier that you met Oliver a few times  
15 at Balch & Bingham perhaps in passing, correct?

16 A. Once in passing and once in a meeting.

17 Q. Did you happen to talk to him about the ongoing work  
18 that he was doing for the Birmingham Airport Authority  
19 expansion?

20 A. No, sir.

21 Q. Just wasn't a topic of conversation?

22 A. No, sir.

23 Q. Okay. You did assist Balch and the lawyers that  
24 Drummond had hired in preparing formal comments to the NPL  
25 opposition, correct?

1     **A.** Yes, sir.

2     Q. And you helped them get together a package of  
3 information that is sent on to the EPA for those purposes,  
4 correct?

5     **A.** Yes, sir.

6     Q. And in that preparation, you did become aware of 93  
7 community letters, letters from citizens or stakeholders in  
8 the Tarrant and Inglenook area, correct?

9     **A.** Correct.

10    Q. And it's not Strada's work product, is it?

11    **A.** No, sir.

12    Q. In other words, Strada did not send Ms. Carter out to  
13 the community to get those letters, to get signatures on  
14 them, or anything like that?

15    **A.** No, sir.

16    Q. And you're not aware if those letters -- how they got  
17 into Balch's possession, are you?

18    **A.** No, sir.

19    Q. And certainly as a technical consultant, your expertise  
20 or your specialty or -- you did not know everything that  
21 the lawyers at Balch were doing, did you?

22    **A.** No, sir.

23    Q. And you're aware that this was a huge project in  
24 fighting the EPA or resisting this listing, correct?

25    **A.** Yes, sir.

1 Q. Okay. So it's not -- it's not something that you  
2 consider unusual that you didn't know the entire scope of  
3 what the lawyers were doing with regard to hiring someone  
4 other than Catrena Carter to do their community outreach?

5 A. No, sir. Not unusual.

6 Q. Back to that meeting with Mr. Brown at the Daniel George  
7 Restaurant. Try to refresh your recollection about how it  
8 was initiated. But we've heard some testimony that  
9 Mr. Glenn was not present at that meeting. To your  
10 information and to your knowledge, he was present, was he  
11 not?

12 A. Yeah, I don't think he was there the whole time, but I  
13 thought he came in and left, yes.

14 Q. Okay. Mr. Phillips, you were asked about your position  
15 as a chair and how you had to insulate yourself from  
16 certain matters that were brought before the commission,  
17 for example, things that would have a conflict of interest  
18 for you, correct?

19 A. As -- I was vice chair. Yes.

20 Q. Okay. Vice chair.

21 A. Yes.

22 Q. My apologies. But you do remember telling us that if  
23 there were matters that you had a professional conflict in  
24 either voting policy on or giving input or even hearing the  
25 matter, you were -- you would remove yourself from that

1 position, correct?

2 A. Yes, sir.

3 Q. On that particular matter, correct?

4 A. Yes, sir.

5 Q. And that came from your consulting with your personal  
6 attorney, correct?

7 A. Yes, sir.

8 Q. And you told your personal attorney that you had this  
9 position as the vice chair of the AEMC and that from time  
10 to time your consulting business may produce some type of a  
11 conflict. And he gave you advice that you were to remove  
12 yourself from that, correct?

13 MS. MARK: Objection, Your Honor. Relevance.

14 THE COURT: Sustained.

15 Q. (BY MR. BLOOMSTON:) Did you always remove yourself from  
16 any conflicts if they were to arise in your position as  
17 vice chair?

18 A. Yes, sir.

19 Q. So you relied on your counsel to give you good advice  
20 and to keep you out of trouble, correct?

21 MS. MARK: Objection, Your Honor. Relevance.

22 THE COURT: Sustained.

23 Q. (BY MR. BLOOMSTON:) Now, you know David Roberson,  
24 correct?

25 A. Yes, sir.

1 Q. And you knew him as an employee of Drummond; is that  
2 correct?

3 A. Yes, sir.

4 Q. And it was actually Balch & Bingham who had a contract  
5 with SEC/Strada, correct?

6 A. Yes, the contract was with us.

7 Q. Okay. And there was nothing -- David Roberson didn't  
8 sign that contract, did he?

9 A. No, sir.

10 Q. And there's nothing unusual, in your professional  
11 experience, to have the end client, in this case Drummond,  
12 to pay your expenses and pay your fees, correct?

13 A. That's correct.

14 Q. Okay. And David Roberson was not your point of contact  
15 at Drummond when you had any issues with that contract, was  
16 he?

17 A. No, sir.

18 Q. And was that Blake Andrews, the general counsel?

19 A. Yes, sir.

20 Q. And that would be the person that you would talk to most  
21 frequently, correct?

22 A. Relative to the contract, yes, sir.

23 Q. Okay. You haven't been presented any direct emails  
24 between you and David Roberson during this contract -- or  
25 during this matter, have you?

1       A. No, sir, not that I recall.

2       Q. Do you recall him being -- or any private phone calls  
3       with David Roberson?

4       A. No, sir.

5       Q. Would all of your work on this particular project either  
6       be directed to Balch law firm or Drummond general counsel  
7       if you needed it?

8       A. Yes, sir.

9                    MR. BLOOMSTON: Okay. We'll tender the witness, Your  
10          Honor.

11                  THE COURT: Thank you.

12                  Redirect?

13                  MS. MARK: Can we pull up Government's Exhibit 129 at  
14          325?

15                  REDIRECT EXAMINATION BY MS. MARK:

16       Q. Mr. Phillips, you were asked a number of questions by  
17       Mr. Gillen about Mr. McKinney's involvement in working on  
18       the 35th Avenue matter.

19       A. Yes, ma'am.

20       MS. WARD: Can we go to at the bottom there, the two  
21       entries on February 10 and February 11 for SGM?

22       Q. Okay. Mr. Phillips, looking at the entry for  
23       February --

24       MR. GILLEN: Your Honor, I object. This is outside the  
25       scope of cross. My questions dealt with meetings that the

1 witness had with Mr. McKinney. This is outside the scope  
2 of cross.

3 THE COURT: What's your recollection, Ms. Mark?

4 MS. MARK: Your Honor, I believe he asked him about  
5 meeting with Mr. McKinney and his involvement in this  
6 matter.

7 THE COURT: I don't recall the specifics. I'll give  
8 you leeway with the caveat that obviously Mr. Gillen can  
9 address it on his recross. You may continue.

10 MS. MARK: Thank you, Your Honor.

11 Q. Mr. Phillips, looking at February 11, 2015, this is an  
12 entry for Steve McKinney. You tell me if I read this  
13 correctly. It says "Provide comments to AEMC and work on  
14 strategy for those comments." "Work on strategy for those  
15 comments." Do you see where I'm referring to?

16 A. Yes, ma'am.

17 MS. MARK: That's all I have for that.

18 (Government's Exhibit 62 was referenced.)

19 MS. MARK: Can we pull up Government's Exhibit 62? You  
20 can just highlight the whole email chain.

21 Q. Mr. Phillips, you were asked a number of questions about  
22 who asked you to meet with Lanier Brown -- excuse me,  
23 introduce Lanier Brown to Oliver Robinson. You remember a  
24 number of those questions?

25 A. Yes, ma'am.

1 Q. Okay. Looking at this bottom email there, on  
2 February 16, 2015, Joel Gilbert writes to you and Trey  
3 Glenn, "Have you guys been able to get Oliver and Lanier  
4 connected?" Do you see where I'm referring to?

5 A. Yes, sir.

6 Q. Thank you.

7 MS. MARK: Can we pull up Government's Exhibit 161?

8 Q. Mr. Phillips, I believe Mr. Bloomston asked you about  
9 whether or not you had any correspondence with David  
10 Roberson. Does this appear to be an email dated  
11 February 19, 2015 from you to Joel Gilbert and David  
12 Roberson?

13 A. Yes, ma'am.

14 Q. And did you attach to this email the Community  
15 Stakeholder Strategy, which was the PowerPoint presentation  
16 that we went through earlier?

17 A. Yes, ma'am.

18 Q. Okay. And was that specifically about the messaging  
19 that would be put out into the community?

20 A. It was a draft to discuss, yes, ma'am.

21 Q. And when you had that meeting at Balch & Bingham on  
22 February 25, was David Roberson present?

23 A. Yes, ma'am.

24 Q. Thank you. Mr. Phillips, as a member of the commission,  
25 did you meet with Director LeFleur?

1     A. Yes, ma'am.

2     Q. Would Director LeFleur actually travel around the state  
3     and meet with each of the commissioners in advance of each  
4     of the commission meetings?

5     A. Yes, sir.

6     Q. And you had meetings with him?

7     A. I did.

8     Q. And on occasion, was North Birmingham one of the items  
9     that he would discuss with the commissioners when he would  
10    go out to meet with them in person?

11    A. That was one of the items on his sheet, on his outline.

12    Q. Because those were issues that he was addressing as the  
13    director of ADEM?

14    A. It was an update, yes.

15    Q. Okay. On February 20, when Oliver Robinson appeared at  
16    the commission, was Director LeFleur present?

17    A. Yes, ma'am.

18    Q. And was he generally always present for the commission  
19    meetings?

20    A. Yes, ma'am.

21    Q. Did he give an address at the commission meeting?

22    A. Yes, ma'am.

23    Q. Okay. Following the commission meeting --

24       MS. MARK: Can we pull up Government's Exhibit 156?

25    Q. And we looked at this earlier. This is an email from

1       Trey Glenn. And it's to Blake Andrews, Joel Gilbert,  
2       yourself, and Curt Jones. Do you see that?

3       **A.** Yes, ma'am.

4       **Q.** And that's dated March 6 of 2015.

5       **A.** Yes, ma'am.

6       **Q.** And you would agree with me that's after the February 20  
7       commission meeting?

8       **A.** Yes, ma'am.

9           MS. MARK: If we can back out for just one second and  
10       pull up the section titled "Community Stakeholder  
11       Engagement."

12       **Q.** Mr. Phillips, do you see there the third line that  
13       starts with "ADEM"?

14       **A.** Yes, ma'am.

15       **Q.** And it reads "Active conversations with ADEM and EMC  
16       including NPL and PA."

17       **A.** Yes, ma'am.

18       **Q.** You see where I'm referring to? So after the commission  
19       meeting in February, February 20, in March of 2015 was SEC  
20       having active conversations with ADEM? Based on this  
21       report from Trey Glenn, were there active conversations  
22       with ADEM?

23       **A.** I don't recall what discussions were going on. This  
24       email is about billing and what ongoing activities may be  
25       going. So I don't know specifically. But yes, it talks

1 about that.

2 Q. That was an activity that was ongoing?

3 A. Yes, ma'am.

4 Q. And looking at -- thank you. So Trey Glenn is reporting  
5 that there was conversations with ADEM in March of 2015,  
6 correct?

7 A. Yes, ma'am.

8 Q. And with EMC?

9 A. Yes, ma'am.

10 Q. And it references the NPL?

11 A. National Priorities List, yes, ma'am.

12 Q. And PA. What is PA?

13 A. Preliminary assessment.

14 Q. And those were two issues that ADEM was considering.

15 Those are issues before ADEM, the NPL and the preliminary  
16 assessment, that ADEM was handling the preliminary  
17 assessment?

18 A. Yes, ma'am.

19 (Government's Exhibit 75 was referenced.)

20 MS. MARK: Thank you. Can we pull up Government's  
21 Exhibit 75?

22 Q. Mr. Phillips, do you recall that, just as we discussed a  
23 moment ago, that Trey Glenn would report to Joel Gilbert,  
24 David Roberson, Steve McKinney about activity from SEC?

25 MR. ESSIG: Objection. Beyond the scope.

1           THE COURT: This is the second time an allegation like  
2 this has come in. Let me do what I did with respect to  
3 Mr. Gillen's objection because I don't recall the  
4 specifics. I'll overrule the objection with the caveat  
5 that Mr. Essig can get into as much detail as he wants to  
6 address this issue on his recross. You may continue.

7 Q. (BY MS. MARK:) Mr. Phillips, did Trey Glenn continue to  
8 meet with ADEM on behalf of SEC for Balch?

9 A. Yes, ma'am, I believe so.

10 Q. Okay. And looking at this email, it says "We need to  
11 discuss how we can influence ADEM's position or have  
12 someone in the AG's office attend the meeting as well as  
13 make sure ADEM doesn't throw in the towel as well as  
14 preserve any issues we want for the appeal process." Do  
15 you see where I'm referring to that?

16 A. Yes, ma'am.

17 MS. MARK: That's all the questions I have, Your Honor.

18 THE COURT: Okay. Mr. Essig, are you ready to begin?

19 MR. ESSIG: Yes, Your Honor. Very briefly.

20 THE COURT: You may.

21 RECROSS-EXAMINATION BY MR. ESSIG:

22 Q. Mr. Phillips, you were shown two emails by Ms. Mark that  
23 were emails -- one, the first one, and I can't remember the  
24 number, was a March 2015 email. It was from SEC, right?

25 A. Yes, ma'am. I mean yes, sir.

1 Q. That's okay. That's okay. From SEC/Strada, right?

2 A. Yes, sir.

3 Q. And it was talking about things that SEC and Strada were  
4 going to do on an ongoing basis; is that right?

5 A. Yes, sir.

6 Q. Had nothing to do with what the AEMC was going to do; is  
7 that right?

8 A. That's correct.

9 Q. It wasn't talking about, "Hey, AEMC, I'm Scott Phillips"  
10 or "I'm Trey Glenn; here's what the AEMC is going to do on  
11 this matter," is it?

12 A. That's correct.

13 Q. And then the last exhibit that you were just shown,  
14 Government's Exhibit 75, and you were read the quote in  
15 there from Trey Glenn -- or it might have been from  
16 Mr. Gilbert; I can't remember -- about throwing in the  
17 towel; is that right?

18 A. Yes, sir.

19 Q. And that was an email communication with Trey Glenn; is  
20 that right?

21 A. Yes, sir.

22 Q. Trey Glenn was an employee or a principal at SEC or  
23 Strada; is that right?

24 A. At SEC, yes, sir.

25 Q. Trey Glenn was not on the AEMC; is that right?

1 A. That's correct.

2 Q. So Government's Exhibit 75 -- and Trey Glenn wasn't  
3 aware of what AEMC was doing, was he, other than what might  
4 have been happening at public hearings?

5 A. That's correct.

6 Q. So he's not talking about what the AEMC is doing. He's  
7 talking about Trey Glenn's thoughts on that; is that right?

8 A. Best I can tell from the email.

9 MR. ESSIG: Thank you.

10 THE COURT: Mr. Gillen.

11 RECROSS-EXAMINATION BY MR. GILLEN:

12 Q. Just so we can be perfectly clear, you did not have any  
13 meetings with Mr. McKinney in December, in January, in  
14 February, in March and April. We're not going to march  
15 through them all. I did it a few minutes ago. You did not  
16 meet with Steve McKinney on the matters that you discussed  
17 here today, did you?

18 A. No, sir, not that I recall.

19 MR. GILLEN: Thank you.

20 THE COURT: Mr. Bloomston?

21 MR. BLOOMSTON: Just one question, sir.

22 THE COURT: You may.

23 RECROSS EXAMINATION BY MR. BLOOMSTON:

24 Q. Did you have any individual one-on-one meetings or phone  
25 calls with David Roberson?

1 A. No, sir.

2 MR. BLOOMSTON: Thank you, sir.

3 THE COURT: Anything else for your witness, Ms. Mark?

4 MS. MARK: Just briefly, Your Honor.

5 Q. With respect to Government's Exhibit 75, just to clarify  
6 one thing, looking at the top of that email --

7 THE COURT: Is this something that Mr. Essig --

8 MS. MARK: Yes, Your Honor.

9 THE COURT: Okay.

10 FURTHER REDIRECT EXAMINATION BY MS. MARK:

11 Q. Just to clarify, Mr. Essig said this email was from Trey  
12 Glenn. Who is this email from?

13 A. It's from Joel Gilbert.

14 Q. And who is it to?

15 A. It's to Steve McKinney and David Roberson.

16 MS. MARK: Okay. Thank you. That's all, Your Honor.

17 THE COURT: May this witness be excused?

18 MR. BLOOMSTON: Yes, sir.

19 MR. ESSIG: Yes, Your Honor.

20 MS. MARK: Yes, Your Honor.

21 MR. GILLEN: Yes, Your Honor.

22 THE COURT: Thank you for being here, Mr. Phillips.

23 (Witness excused.)

24 THE COURT: Who is the government's next witness?

25 MR. WARD: Government calls Jeff Pitts.

1           THE COURT: Jeff Pitts?

2           MR. WARD: Yes, Your Honor.

3           THE COURT: Thanks.

4           We'll take a break at 4:30 and go until 6:00 today.

5           Tomorrow, because one of the jurors has to be somewhere  
6           around 6:15, from what I have been told, we will break  
7           around 5:30 tomorrow.

8           Mr. Pitts, good afternoon.

9           (Witness sworn.)

10          THE COURTROOM DEPUTY: Please state and spell your  
11          first and last name for the record.

12          THE WITNESS: Jeff Pitts. J-e-f-f P-i-t-t-s.

13          THE COURTROOM DEPUTY: What city and state do you  
14          reside in?

15          THE WITNESS: Birmingham, Alabama.

16                   JEFF PITTS,

17           duly sworn, was examined and testified as follows:

18          DIRECT EXAMINATION BY MR. WARD:

19          Q. Good afternoon, Mr. Pitts. If I could ask you just to  
20          step closer to the microphone. Thank you.

21          Where do you work?

22          A. Matrix.

23          Q. How long have you been at Matrix?

24          A. Twenty-two years.

25          Q. What's your role at Matrix?

1     **A.** I am the CEO.

2     Q. Do you have any educational degrees?

3     **A.** I do. I have a bachelor's in economics, a master's in

4     public administration.

5     Q. Can you tell us what kind of firm Matrix is?

6     **A.** We are crisis and issue management, political firm,

7     consulting.

8     Q. You say crisis and issue management?

9     **A.** Correct.

10    Q. What kind of entities do you do work for?

11    **A.** Corporate, political candidates. We don't do any

12    government work.

13    Q. Okay. Do you do work for political campaigns?

14    **A.** Correct.

15    Q. And you said you do work for corporations?

16    **A.** Correct.

17    Q. And you mentioned issue management. Could you describe

18    what that is?

19    **A.** Yeah. I mean -- I'm sorry. I'm trying to get this

20    straight. When a corporation or a person has an issue

21    like -- I'm trying to think of a good example. I'll use a

22    real example. Like BP had the oil crisis. We worked for

23    them to help them manage the issue around the oil crisis,

24    things like that. Usually, you know, something detrimental

25    to their business.

1 Q. Okay. So an environmental issue potentially?

2 A. Correct.

3 Q. Does Matrix have experience doing messaging work?

4 A. Yes.

5 Q. Okay. Can you tell us what that is? What's messaging?

6 A. Messaging is, you know, collecting data, deciding what  
7 the best message is around data, for example, if you wanted  
8 to communicate to the group here, you know, try to find  
9 what are the key issues that, you know, they need to  
10 understand and then write it and communicate it as simply  
11 and concisely as possible.

12 Q. Okay. And communicate it to whom?

13 A. It depends. It could -- anybody could be in the  
14 audience.

15 Q. Whatever the relevant audience is for that issue?

16 A. Correct. Voters.

17 Q. Does Matrix have experience doing community outreach  
18 work?

19 A. Yes.

20 Q. Can you tell us what kind of community outreach  
21 experience you have?

22 A. Doing hearings. Doing door-to-door, survey door-to-door  
23 information. Anything in the community where the community  
24 interfaces with the issue.

25 Q. Do you have and does Matrix have experience spreading a

1 message to a particular community?

2 A. Yeah. Delivering messages to audiences, correct.

3 Q. Mr. Pitts, I want to ask you about the 35th Avenue  
4 Superfund Site. Are you familiar with that site?

5 A. The name. I'm not familiar with the geographic site  
6 very well.

7 Q. Okay. Are you familiar with environmental issues  
8 surrounding the 35th Avenue Superfund Site?

9 A. Yes.

10 Q. Okay. At some point, did somebody at Balch reach out to  
11 you regarding the 35th Avenue Superfund Site?

12 A. Yes.

13 Q. Okay. Who reached out?

14 A. The first recollection of any conversation I remember  
15 having around the Superfund site would have been a  
16 conversation with Steve McKinney on the general idea of the  
17 regulation, I think either the regulation changing or  
18 expanding.

19 Q. Okay. Did you know Mr. McKinney at that point?

20 A. He worked at Balch. I knew him socially, I guess you  
21 could say. I knew who he was.

22 Q. And why did you understand him to be reaching out to  
23 you?

24 A. Just floating around the idea of the regulation and the  
25 effects. And, quite frankly, it was kind of at the

1 beginning, I believe, and they weren't real sure what the  
2 effects in the community would be.

3 Q. Were you talking general advice or strategy?

4 A. It was really -- that conversation was really more about  
5 the regulation, very general.

6 Q. Okay. Do you know Joel Gilbert?

7 A. Yes.

8 Q. Okay. How do you know him?

9 A. I've worked and known Joel for a decade, personally and  
10 professionally.

11 Q. What about David Roberson, do you know him?

12 A. Yes, same.

13 Q. Same? Do you recall, Mr. Pitts, having interactions  
14 over a period of time with Joel Gilbert and David Roberson  
15 about the 35th Superfund site?

16 A. Yes.

17 Q. Okay. Can you tell us about those?

18 A. I think, best I can recall, we had two or three, maybe  
19 four meetings, a couple of calls to discuss the site, the  
20 regulations that were changing. I'm sorry, I don't  
21 remember exactly what the circumstances were. And then the  
22 possible impact to the community and to the companies.

23 Q. Okay.

24 MR. WARD: Could we have, Ms. Borden, Government's  
25 Exhibit 129 at page 285? And could we look at the

1 November 11, 2014 entry for Mr. Gilbert?

2 Q. Mr. Pitts, this is a time entry for Mr. Gilbert, but I  
3 want to draw your attention to the first few lines. Do you  
4 see where it says "conference call with Mr. Jeff Pitts  
5 regarding recent communications between GASP and city  
6 regarding NPL listing"?

7 A. Yes, I see that.

8 Q. Okay. Would that have been one of the conversations you  
9 have been describing?

10 A. Yeah. I mean, it could have been a conference call or  
11 basically a telephone call, yes.

12 Q. What were the communications you had with Mr. Gilbert  
13 and Mr. Roberson about? What was the sort of the purpose  
14 of the calls?

15 A. Most of the conversations were about where the issue was  
16 at, you know, things if there were information or  
17 misinformation in the community and also just generally  
18 however they thought it was moving forward and then kind of  
19 a strategy to address the evolving issue.

20 Q. Okay. So were you involved in at least a few  
21 conversations with them about what the strategy would be  
22 going forward?

23 A. Yes.

24 Q. Do you recall discussions about community outreach as  
25 part of the strategy?

1     **A.** Yes.

2     Q. Do you know Oliver Robinson?

3     **A.** I know who he is. I do not know him personally.

4     Q. Okay. Back in this time frame, late 2014, early 2015,  
5 did you ever come to learn that Oliver Robinson or an  
6 entity he controlled was working with Balch and Drummond on  
7 these issues?

8     **A.** No.

9     Q. Did Mr. Gilbert or Mr. Roberson mention that in any of  
10 your meetings about community outreach?

11    **A.** Not Mr. Roberson, no.

12    Q. Okay. Did Mr. Gilbert or Mr. Roberson ever ask for your  
13 input about whether Oliver Robinson had experience doing  
14 community outreach work?

15    **A.** Not that I recall.

16    Q. Were you interested in doing more work with Balch and  
17 Drummond on these issues?

18    **A.** Yes.

19    Q. Were you interested in taking a more active paid role?

20    **A.** Yeah, sure.

21    Q. Okay. Did you pitch Matrix, or was that just sort of  
22 understood, that you were interested in getting more  
23 involved?

24    **A.** After 22 years, I'm always pitching Matrix.

25    Q. Okay. Did Mr. Gilbert or Mr. Roberson ever suggest to

1 you that they needed Matrix or you to do community outreach  
2 on these issues?

3 A. I think it was kind of understood they were looking for  
4 something. And whether it came together or not, that's  
5 just how it was.

6 Q. Okay. Was Matrix ultimately hired to do the work?

7 A. No.

8 Q. Could Matrix have done community outreach on these  
9 issues?

10 A. Yes.

11 Q. Could you have put together a grassroots campaign in  
12 North Birmingham?

13 A. Yes.

14 Q. Okay. Did you have experience doing things like that?

15 A. Yes.

16 Q. Do you know Catrena Carter?

17 A. Yes.

18 Q. How do you know her?

19 A. Oh, I've known Catrena ten years. She's a local  
20 Birmingham activist that, you know, you know her in the  
21 community.

22 Q. Say that again.

23 A. I've just known her socially and professionally for a  
24 decade.

25 Q. Does she have experience doing community outreach work

1       in Birmingham?

2       A. Oh, yes. Yes.

3       Q. From what you've observed of her work, what do you think  
4       of it? What do you think of the quality of it?

5       A. I think it's good, I mean, very good.

6       Q. Is she good at what she does?

7       A. Yes.

8       Q. In fact, at some point did you recommend her to do  
9       community outreach work for the firm SEC, Trey Glenn and  
10      Scott Phillips' firm?

11      A. Yeah. Strada.

12      Q. Strada. Okay.

13      A. Yes.

14      Q. Did you recommend her to one of those two individuals?

15      A. I recommended her to Scott.

16      Q. Do you know whether she actually came to be hired by  
17      Scott to do work?

18      A. My understanding was that she did, but I don't know.

19      Q. I want to fast-forward close to a year to the fall of  
20      2015.

21           MR. WARD: Could we look at page 657 of the same  
22       exhibit? Can we look at the entry for August 26, 2015?

23      Q. Mr. Pitts, I want to draw your attention to the middle  
24      of this entry, which reads "Emails to Mr. Pitts and  
25      Mr. John Powe regarding meeting regarding community

1 outreach." Do you see that?

2 A. Yes.

3 Q. Okay. Do you recall at some point in late August 2015  
4 reviewing a community outreach proposal for John Powe and  
5 Mr. Gilbert?

6 A. I remember reviewing it. I'm not sure when it was, but,  
7 yes, I remember reviewing the proposal.

8 Q. Okay. Tell us how that came about.

9 A. Best I remember is John was putting together a proposal,  
10 and Joel and/or David -- I can't remember which -- we  
11 discussed having me look at it and see what I thought about  
12 it, basically.

13 Q. Did you know John Powe at the time?

14 A. Yes.

15 Q. Okay. And so what did you understand him to be  
16 proposing doing?

17 A. If I remember, he was proposing a narrow grassroots  
18 community outreach proposal, is what I remember.

19 Q. Okay. Did you review the proposal?

20 A. Yes, I did.

21 Q. Did you make edits to it?

22 A. Yes.

23 Q. What did you think of the proposal?

24 A. I thought it was okay. I mean, it just needed some  
25 editing and some cleaning up.

1 Q. Okay.

2 (Government's Exhibit 208 was referenced.)

3 MR. WARD: Can we have Government's Exhibit 208,

4 Ms. Borden?

5 Q. Mr. Pitts, you're not on the email at the top, but  
6 there's an attachment. At the email at the top, you can  
7 see that it's dated September 9, 2015 from Mr. Gilbert to  
8 Mr. Roberson. And you see in the body of the email, it  
9 reads "FYI from Oliver and John. Follow-up to discussion  
10 with Jeff and I."

11 Okay. Do you have any reason to doubt that that's a  
12 reference to you, Jeff Pitts?

13 A. I don't know what's attached.

14 Q. Okay. Let's look at the attachment. And let's not  
15 highlight anything yet. Do you recognize it? Is this the  
16 proposal that you reviewed from Mr. Powe?

17 A. It looks similar. Yes, it looks very similar to a  
18 proposal I reviewed from him.

19 Q. Okay. And if we go to the third page of the document.

20 MR. WARD: Stop right there.

21 Q. Do you see on page 2 a reference to website and  
22 maintenance?

23 A. Yes.

24 Q. Okay. And then back to the first page of the proposal,  
25 reference to workshop activities and then a reference to

1 the Oliver Robinson Foundation?

2 A. I do.

3 Q. Did you know what the Oliver Robinson Foundation was  
4 when you reviewed this proposal?

5 A. I don't recall. No, I don't recall seeing Oliver  
6 Robinson Foundation in there.

7 Q. Okay. Do you recall knowing at the point that you  
8 reviewed this proposal that Oliver Robinson's foundation  
9 had been on a retainer contract with Balch for seven  
10 months?

11 A. No, I did not know that.

12 Q. Do you recall that coming up in any meeting you had with  
13 Mr. Gilbert or Mr. Roberson?

14 A. I do not recall that.

15 Q. Do you know what ultimately happened with Mr. Powe's  
16 proposal? Did he get hired to do community outreach?

17 A. I don't know. There was a lot of drafts. I don't know  
18 where it ended.

19 Q. Okay. You see a reference here at the top to "Getting  
20 Smart," the top of his proposal. Do you see that,  
21 Mr. Pitts?

22 A. Yes, I do.

23 Q. Did you come to be familiar with an organization called  
24 Get Smart or Get Smart Tarrant?

25 A. Yes, Get Smart.

1 Q. What did you understand Get Smart to mean?

2 A. Get Smart Tarrant, what I understood to be was a  
3 community coalition that was being built to educate  
4 Tarrant.

5 Q. Who did you understand to be involved?

6 A. John Powe, Joel, and -- gosh. Who else was there?

7 There was one other individual. I can't remember the other  
8 person.

9 Q. Okay. At some point in the fall of 2015, did your firm  
10 actually do a mail-out for Get Smart Tarrant to the  
11 residents of Tarrant?

12 A. Yes.

13 Q. How did that come about?

14 A. They needed a certified letter sent to the residents,  
15 and we've got a lot of manpower. We have done that before.  
16 We were contacted. One of the guys in my office was  
17 contacted, asked if we could do a mail-out that was  
18 certified mailed. We got the list and the letter, certify  
19 mailed it, sent it, and sent them a bill for the postage  
20 and printing.

21 Q. Who contacted somebody in your firm?

22 A. Joel and David or Joel or David. I can't remember.

23 Q. Mr. Gilbert or Mr. Roberson?

24 A. Yes.

25 Q. Okay. And what they wanted Matrix to do was to put

1 together a mail-out of a letter to residents in Tarrant?

2 A. Correct.

3 Q. Okay. And did Matrix charge for it, or did you just  
4 pass on your costs?

5 A. I believe we just passed our costs on.

6 MR. WARD: Your Honor, may I approach the witness?

7 THE COURT: You may.

8 Q. (BY MR. WARD:) Mr. Pitts, do you recall reviewing the  
9 letter that was enclosed in the mail-out that you sent out  
10 to Tarrant residents?

11 A. Yes.

12 Q. Okay. I have handed you a document that has been marked  
13 for identification as Government's Exhibit 208. Tell me if  
14 you recognize that as the letter.

15 (Government's Exhibit 212 was referenced.)

16 THE COURT: This is 212.

17 MR. WARD: Oh, I'm sorry. Is it?

18 Q. 212.

19 A. It looks very familiar, yes.

20 MR. WARD: Your Honor, the government would offer  
21 Government's Exhibit 212.

22 THE COURT: Let me know if there's any objections after  
23 you have had a chance to review it.

24 MR. SHARMAN: One moment, Your Honor.

25 THE COURT: Take your time.

1 MR. McKNIGHT: No objection, Judge.

2 MR. SHARMAN: No objection, Judge.

3 MR. BOUCHARD: No objection, Your Honor.

4 THE COURT: Thanks, everyone. 212 is in and may be  
5 published.

6 MR. WARD: Thank you, Your Honor.

7 (Government's Exhibit 212 was admitted into evidence.)

8 Q. Mr. Pitts, just to confirm, does this appear to be the  
9 letter that you mailed out on behalf of Mr. Gilbert and  
10 Mr. Roberson to residents in Tarrant?

11 A. I believe it is, yes.

12 Q. Okay. Do you see the signature block at the bottom?  
13 Amanda Robinson is listed as the executive director of Get  
14 Smart Tarrant?

15 A. Yes.

16 Q. Do you know who Amanda Robinson is?

17 A. I now know her to be Oliver's daughter.

18 Q. Oliver Robinson?

19 A. Oliver Robinson.

20 Q. Did you know at the time that you did this mail-out that  
21 she was Oliver Robinson's daughter?

22 A. Quite frankly, I didn't know whose signature was on it.  
23 I don't remember the signature on it. But no, I did not.

24 Q. Did you do the mail-out in October 2015? Does that  
25 sound about right?

1       A. 2015, somewhere in there.

2       Q. And to be clear, did Get Smart do the mail-out, or did  
3       Matrix do the mail-out?

4       A. We mailed it, yeah. They sent us a letter with a list,  
5       and we stuck it in an envelope and mailed it.

6       Q. Who sent you the letter?

7       A. It was in an email.

8       Q. Was it Mr. Gilbert or Mr. Roberson?

9       A. Most likely, yes, it was. It went to a guy in my firm.

10       MR. WARD: Nothing further, Your Honor.

11       THE COURT: Thank you.

12           Well, let's take a break here, and then when we come  
13       back, we can begin with the cross-exams.

14           Members of the jury, please do not talk about this case  
15       during the break. And if you leave the jury room and in  
16       the unlikely event you're approached about this case,  
17       please let me know.

18           We are in recess until 4:40. Thanks, everyone.

19           (The following proceedings were had in open court  
20       outside of the presence and hearing of the jury.)

21       THE COURT: Mr. Pitts, you may step down, stretch your  
22       legs. You cannot talk about your testimony during the  
23       break, though. Thank you.

24           15 minutes, everyone. Thanks.

25           (Break.)

1       (The following proceedings were had in open court in the  
2 presence and hearing of the jury.)

3           THE COURT: Be seated, everyone.

4           Cross-exam, Mr. Sharman.

5           MR. SHARMAN: Thank you, Your Honor.

6           CROSS-EXAMINATION BY MR. SHARMAN:

7           Q. Mr. Pitts, my name is Jack Sharman. I represent Joel  
8 Gilbert. Do you see Mr. Gilbert in the courtroom?

9           A. Yes, sir, I do.

10          Q. On direct you were asked a couple of questions about  
11 community outreach, and you said with regard to this  
12 matter, Matrix could have done it. Do you remember saying  
13 that?

14          A. Yes, sir.

15          Q. Now, you don't live in Tarrant, right?

16          A. No, I do not.

17          Q. You don't live in North Birmingham, right?

18          A. Correct.

19          Q. So you or Matrix, if you did outreach work, you would in  
20 all likelihood have to go get folks to actually do that  
21 boots-on-the-ground work, right?

22          A. Correct.

23          Q. You said on direct in response to Mr. Ward's questions  
24 that y'all wanted to do the work and do more work, right?

25          A. Correct.

1 Q. And you always want to do more work, right?

2 A. Yes.

3 Q. And y'all do good work, right?

4 A. I hope so.

5 Q. But at the end of the day, the client can make a choice  
6 about which firm or individual it wants to go forward with,  
7 right?

8 A. Correct.

9 Q. And that's their right to do so, right?

10 A. Correct.

11 Q. And you don't bring any legal or ethical or moral  
12 judgments about a client favoring one firm or one approach  
13 over the other, right?

14 A. No.

15 Q. And you don't read anything into that?

16 A. No.

17 Q. And with regard to a gentleman named John Powe, whom you  
18 discussed with Mr. Ward, remind us who Mr. Powe is.

19 A. John -- and I don't know his title -- works at the  
20 county, but he's also an activist, a local activist.

21 Q. You've worked with him from time to time in the past?

22 A. Correct.

23 Q. And you said that he came to you with a draft campaign  
24 plan or proposal that he wanted you to review, right?

25 A. That's -- yeah. PowerPoint of some sort, yes.

1 Q. And you said that he does that from time to time, come  
2 to you for reviewing documents?

3 A. I've met with Powe several times in the last ten years.

4 Q. All right. And you were shown what's in evidence as  
5 Government's Exhibit 208.

6 MR. SHARMAN: Sam, could you bring that up, please?

7 Q. Do you remember discussing first this email with  
8 Mr. Ward?

9 A. Yes.

10 Q. This is where Mr. Gilbert says to Mr. David Roberson in  
11 September of 2015 "FYI from Oliver and John. Follow-up to  
12 discussion with Jeff and I." You aren't on this email, but  
13 you reasonably conclude that the Jeff referred there is  
14 you?

15 A. Yes.

16 Q. And then if we go to the next page, you discussed with  
17 Mr. Ward the attached document, right?

18 A. Yes.

19 Q. And was I correct that you said that this looked like  
20 the document that Mr. Powe asked you to take a look at,  
21 right?

22 A. It looked similar to a version, yes. Looks like the  
23 document, yes.

24 Q. And what you reviewed, except for maybe some phrasing  
25 and some typos and so forth, it looked reasonable to you,

1 right?

2 A. Yeah.

3 Q. And nothing struck you in there as being unlawful or  
4 inappropriate, right?

5 A. Correct.

6 Q. And in general, when you worked with Mr. Powe, you found  
7 him to be forthright and decent to work with, right?

8 A. Right.

9 Q. And then Mr. Ward also visited with you about  
10 Government's Exhibit 212.

11 MR. SHARMAN: Sam, could you call that up, please?

12 Q. Now, if I understood you correctly, 212 was a letter  
13 that your firm mailed out, right?

14 A. Yes.

15 Q. And that you received this -- you weren't certain from  
16 whom you received it, but you said you may have received it  
17 from Mr. Gilbert; is that right?

18 A. Correct.

19 Q. And you don't have any reason to believe that the letter  
20 that your firm mailed out contains any untrue statements in  
21 it, do you?

22 A. I do not.

23 Q. That's not your practice to be mailing out things that  
24 you believe to be untrue, right?

25 A. Yes.

1 Q. I'm sorry?

2 A. Correct.

3 MR. SHARMAN: And you can take that down, Sam.

4 Q. And you've known Mr. Gilbert for about ten years; is  
5 that right?

6 A. Give or take a couple, yes.

7 Q. And in that time, Mr. Gilbert, in your experience, has  
8 always been honest with you, right?

9 A. Yes.

10 Q. He's been truthful with you?

11 A. Always.

12 Q. Very professional?

13 A. Correct.

14 MR. SHARMAN: No further questions. Thank you, sir.

15 THE COURT: Thank you, Mr. Sharman.

16 Mr. McKnight?

17 MR. McKNIGHT: Yes, sir.

18 CROSS-EXAMINATION BY MR. McKNIGHT:

19 Q. Mr. Pitts, I'm David McKnight. I represent Steve  
20 McKinney in this matter.

21 During your testimony, you mentioned his name one time,  
22 and it was for a phone conversation you had very early on;  
23 is that correct?

24 A. Correct.

25 Q. And it was regarding regulations, correct?

1     A. Correct.

2     Q. And thereafter, you mentioned meetings and you saw  
3     emails, but Mr. McKinney's name wasn't involved with any of  
4     that, correct?

5     A. Correct.

6     Q. Okay. And during that one phone conversation that you  
7     mentioned with Mr. McKinney, nothing improper or illegal  
8     was discussed, correct?

9     A. Correct.

10    Q. Just a general conversation about regulations?

11    A. Yes.

12           MR. MCKNIGHT: Thank you. That's all I have.

13           THE COURT: Thank you, Mr. McKnight.

14           Mr. Bouchard?

15           MR. BOUCHARD: No cross-examination, Your Honor.

16           THE COURT: Thank you.

17           Any redirect for this witness?

18           MR. WARD: No, Your Honor.

19           THE COURT: Mr. Pitts, looks like you may be free to  
20       go.

21           Any objections?

22           MR. SHARMAN: No, sir.

23           THE COURT: Thank you for being here, sir. Take care.

24           (Witness excused.)

25           THE COURT: Who's your next witness, Mr. Ward?

1 MR. WARD: The government calls Catrena Carter.

2 THE COURT: Ms. Carter, good afternoon.

3 (Witness sworn.)

4 THE COURTROOM DEPUTY: Please state and spell your  
5 first and last name for the record.

6 THE WITNESS: Catrena Norris Carter. Catrena,  
7 C-a-t-r-e-n-a. Last name Carter, C-a-r-t-e-r.

8 THE COURTROOM DEPUTY: What city and state do you  
9 reside in?

10 THE WITNESS: Birmingham, Alabama.

11 CATRENA NORRIS CARTER,

12 duly sworn, was examined and testified as follows:

13 DIRECT EXAMINATION MR. WARD:

14 Q. Good afternoon, Ms. Carter.

15 A. Good afternoon.

16 Q. What do you do for a living?

17 A. I am a political activist -- well, a community activist.  
18 I do political consulting. I do events. I'm the national  
19 coordinator for the Selma to Montgomery March every year  
20 and have a nonprofit where I train women to run for office.

21 Q. Okay. Busy schedule. Can you tell us about your work  
22 as a sort of community activist? What do you mean by that?  
23 What kind of work do you do?

24 A. As far as community activism?

25 Q. Yes.

1       **A.** Or community relations?

2       **Q.** Well, let's take them in turn. Community activism first  
3 and then community relations after.

4       **A.** Well, activism, for example, I've taken several buses  
5 and vans from the state of Alabama to D.C. to lobby on  
6 behalf of women, on behalf of voting rights. I do campaign  
7 work.

8       **Q.** Okay. What about community relations? What kind of  
9 experience do you have doing that work?

10      **A.** Community relations is more issue-driven with things  
11 that's going on on the ground in the community just doing  
12 outreach and not necessarily activism.

13      **Q.** Okay. And then you mentioned events, putting on events.  
14 And you mentioned the national coordinator for the Selma  
15 March?

16      **A.** Yes.

17      **Q.** Tell us about that. What is that?

18      **A.** I've been doing that every year since I probably was 18  
19 years old. But more recently, the 50th anniversary of the  
20 commemoration of the celebration of the right to vote and  
21 Bloody Sunday, I was the national coordinator for that  
22 where we brought in like three sitting -- three different  
23 presidents and folks from all over the country came on  
24 behalf the Edmund Pettus Bridge.

25      **Q.** Okay. When was that held?

1 A. That was 2015.

2 Q. Okay. And what was your role in --

3 A. I was the national coordinator and the executive  
4 director for the foundation, for Selma to Montgomery.

5 Q. Can you tell us about the kinds of coordination and work  
6 that you had to do to get ready for that event?

7 A. Well, you got to hold --

8 MS. HODGES: Objection, Your Honor. Relevance.

9 THE COURT: Sustained.

10 MR. WARD: Fair enough.

11 Q. (BY MR. WARD:) Ms. Carter, can you tell us if you know  
12 Jeff Pitts?

13 A. I do, yes.

14 Q. Have you done work for him?

15 A. Yes.

16 Q. What type of work have you done?

17 A. Mostly campaign work.

18 Q. Okay. Do you know Trey Glenn and Scott Phillips?

19 A. Yes.

20 Q. How do you know them?

21 A. Community relations.

22 Q. At some point, did you begin working with Trey Glenn and  
23 Scott Phillips on community relations related to  
24 environmental issues in North Birmingham?

25 A. Yes.

1 Q. Okay.

2 (Government's Exhibit 147 was referenced.)

3 MR. WARD: Could we have Government's Exhibit 147,

4 Ms. Borden?

5 Q. And we'll just look at the top half of the page.

6 Ms. Carter, I don't want to take you through this email

7 chain in detail, but do you see the top two emails there,

8 the email exchange between you and Trey Glenn?

9 A. I do.

10 Q. From January 7, 2014?

11 A. I do.

12 Q. Okay. Do you see Mr. Glenn saying at the bottom that "I  
13 would like to get you started tomorrow. I got the okay for  
14 2500 per month to start. We'll just need to stay in  
15 touch -- in close coordination to see how much effort this  
16 is taking. Send your invoice to Southeast Engineering &  
17 Consulting"? Do you see that?

18 A. Yes.

19 Q. Okay. At about that time, early January 2014, did you  
20 begin doing work for SEC in the community outreach phase?

21 A. Yes.

22 Q. Tell us what kind of work you did.

23 A. I would just go to meetings and take detailed reports on  
24 who was there and what was the conversation as far as the  
25 community, the people within the community and what they

1       wanted, what was the conversation on, what people were  
2       talking about.

3       Q. Okay. And that was specifically with respect to the  
4       North Birmingham environmental issues?

5       A. Right.

6           MR. WARD: Could we take a look at Government's Exhibit  
7       127? And let's look at page 2.

8       Q. Ms. Carter, this is a collection of SEC invoices to its  
9       client, ABC Coke, and Balch & Bingham for the work it did  
10      on the North Birmingham issues. I want to direct your  
11      attention to the bottom entry on this page, January 2014,  
12      Specialist III. Do you see there a description that reads  
13      "Prepare for, participate in, and report on community and  
14      grassroots meetings"?

15      A. Yes.

16      Q. Okay. Is that a fair description of what you were doing  
17      for SEC during this time frame?

18      A. Yes.

19      Q. Okay. And did that work continue for some period of  
20      time?

21      A. It did.

22      Q. Okay.

23           MR. WARD: If we go, for example, to page 67 of this  
24      exhibit and just magnify that part. Perfect, Ms. Borden.

25      Q. Do you see in this invoice, Ms. Carter, a reference to

1 September 2015 to a CC? Is that you?

2 A. Yes.

3 Q. Okay. And do you see a description there that reads  
4 "Review materials, meet with several community members, and  
5 report to WSP"?

6 A. Yes.

7 Q. Is that Scott Phillips?

8 A. WS -- well, I just know him as Scott Phillips, but I'm  
9 assuming, yes.

10 Q. Okay. So that's nearly two years later. Did you do  
11 work for SEC, community outreach work for SEC on these  
12 issues for two years?

13 A. Yeah, about that. Yes.

14 Q. And did you attend the community meetings throughout  
15 this time frame?

16 A. Yes.

17 Q. Okay. Did you have a point of contact at SEC that you  
18 talked to and reported back to on these issues?

19 A. Yes. It was either Scott or Trey --

20 Q. Okay.

21 A. -- Glenn.

22 Q. And did you know who they were working for, who their  
23 client was?

24 A. No.

25 Q. Okay.

1 A. I -- initially, no, when all this happened.

2 Q. Sure. At some point did you come to find out that they  
3 were working for Drummond and Balch & Bingham?

4 A. I think Balch. I thought Balch.

5 Q. Okay.

6 MR. WARD: Could we go to Government's Exhibit 129 at  
7 page 340?

8 Q. And look at the April 27 entry for Mr. Gilbert.

9 Ms. Carter, this is a time entry --

10 MR. ESSIG: Object to relevance with this witness.

11 THE COURT: Is this witness mentioned here?

12 MR. WARD: Yes, Your Honor, in the second line.

13 THE COURT: All right. Well, I'll overrule for now.

14 MR. WARD: Thank you, Your Honor.

15 Q. Ms. Carter, this is a time entry that Mr. Gilbert wrote,  
16 but it refers to you in the second line. So could you read  
17 for us just the first two lines of this entry?

18 A. "Attend meeting with David Roberson and Trey Glenn,  
19 Ms. Catrena Norris Carter regarding community outreach."

20 Q. Thank you. That's good. Do you recall attending  
21 meetings with Mr. Gilbert and Mr. Roberson regarding  
22 community outreach?

23 A. Just one meeting.

24 Q. Okay. Do you know Joel Gilbert?

25 A. Yes.

1 Q. Okay. How do you know him?

2 A. We met out -- I might have been having cocktails or at a  
3 restaurant, and he came when Scott and I were having a  
4 meeting. And that was the first time that I met him.

5 Q. Okay. And --

6 A. It was social, though.

7 Q. Do you recall what time frame that was?

8 A. Probably 2014ish.

9 Q. And was that a meeting regarding North Birmingham issues  
10 or something else?

11 A. No, it was social. Scott and I had been meeting, but  
12 then Trey came, and it was social from there.

13 Q. Okay. What about David Roberson, did you know him?

14 A. No.

15 Q. Did you know where he worked?

16 A. Not until the one meeting that we had and he was there.  
17 I met him that one time.

18 Q. Okay. Do you recall this meeting regarding community  
19 outreach?

20 A. I do.

21 Q. Okay. What was the purpose of this meeting in April of  
22 2015?

23 A. To my recollection, we talked about Tarrant. It wasn't  
24 anything about North Birmingham. It was about what was  
25 going on in Tarrant.

1 Q. Was it about a community outreach strategy for Tarrant?

2 A. Uh-huh. Well, possibly.

3 Q. Okay. But one had not been begun at that point?

4 A. No.

5 Q. Do you recall communicating with Mr. Gilbert or  
6 Mr. Roberson in the months after this meeting took place?

7 A. I did continue to have some conversations with  
8 Mr. Gilbert.

9 Q. Okay. Can you tell us about those?

10 A. They were about what was going on in Mobile and in  
11 Africatown, but never really conversations about North  
12 Birmingham.

13 Q. Okay. So did you have conversations with Mr. Gilbert at  
14 some point about a different project? Is that what you  
15 were referring to?

16 A. Yes.

17 Q. Okay. And that was in Mobile?

18 A. Yes.

19 Q. Do you recall conversations with Mr. Roberson after this  
20 point?

21 A. No.

22 MR. WARD: Can we look at page 376 of this exhibit,  
23 Ms. Borden?

24 Q. I want to direct you to the May 12 entry for Mr. Gilbert  
25 and in particular the third line from the bottom. Do you

1 see, Ms. Carter, the reference to meeting with Ms. Catrena  
2 Carter -- Ms. Catrena Norris (North Birmingham outreach)  
3 regarding EPA FOIA materials? Do you see that?

4 A. I see that, yes.

5 Q. Okay. Do you recall having a meeting with Mr. Gilbert  
6 in May of 2015 on North Birmingham outreach?

7 A. No. I don't recall.

8 Q. How much contact did you have with Mr. Glenn or  
9 Mr. Phillips about your community outreach efforts in North  
10 Birmingham? How regular was your interaction with them?

11 A. Weekly.

12 Q. Weekly?

13 A. Uh-huh.

14 Q. Would you give them updates during those weekly  
15 conversations?

16 A. Yes.

17 Q. Did they ever express to you that Mr. Gilbert or  
18 Mr. Roberson wanted to do more community outreach work on  
19 these issues in North Birmingham?

20 A. No. They would just say they wanted me to do something,  
21 but never mentioning other parties. It would just be us as  
22 a team.

23 Q. Ms. Carter, do you know Oliver Robinson?

24 A. I do.

25 Q. How do you know him?

1       A. He's a state representative.

2       Q. Okay. Did you know him personally in the 2015 time  
3       frame?

4       A. I knew him -- did I know him or did I have a  
5       relationship with him? I mean, I knew him.

6       Q. You knew him casually?

7       A. Yeah, but I didn't -- I never had a personal  
8       relationship with him.

9       Q. Did Trey Glenn or Scott Phillips ever tell you anything  
10      during your two years working on these issues, did they  
11      ever tell you anything about Oliver Robinson or Oliver  
12      Robinson's foundation having been hired to do community  
13      outreach work in North Birmingham?

14      A. No, never.

15      Q. And then the two meetings that are referred to in  
16      Mr. Gilbert's time entries that you had with Mr. Gilbert,  
17      do you recall Mr. Gilbert ever mentioning Oliver Robinson  
18      or Oliver Robinson's foundation as a potential way of doing  
19      community outreach in North Birmingham?

20      A. No.

21      Q. Did Mr. Gilbert or Mr. Roberson ever ask you to  
22      coordinate with Oliver Robinson's foundation to do this  
23      work?

24      A. No.

25      Q. And did Mr. Glenn or Mr. Phillips ever ask you that?

1     A. No.

2     Q. You said you attended community meetings over time. Was  
3     that over the course of the two years, you attended a  
4     number of community meetings?

5     A. Uh-huh.

6     Q. Okay. Did you see various community activists or other  
7     players at those meetings over time?

8     A. Yes.

9     Q. Did you ever see Oliver Robinson at any of those  
10    meetings?

11    A. Not that I recall. No.

12            MR. WARD: Nothing further, Your Honor.

13            THE COURT: Thank you.

14            Cross-exam, Mr. Essig?

15            MR. ESSIG: Yes, Your Honor.

16            CROSS-EXAMINATION BY MR. ESSIG:

17     Q. Good afternoon, Ms. Carter, how are you?

18     A. I'm good. How are you?

19     Q. I'm good. My name is Brandon Essig, and I represent  
20     Joel Gilbert. You know Mr. Gilbert; is that right?

21     A. I do.

22     Q. And, Ms. Carter, do you see Mr. Gilbert in the courtroom  
23     here today?

24     A. I do.

25     Q. And you interacted with Mr. Gilbert quite a bit during

1 the time you were doing community outreach in North  
2 Birmingham; is that right?

3 A. Toward the end, yes.

4 Q. Okay. Had a lot of conversations with Mr. Gilbert;  
5 would that be fair to say?

6 A. Yes.

7 Q. And y'all had a decent number of discussions about the  
8 work that you were doing for Strada, SEC, and Balch &  
9 Bingham; is that right?

10 A. Well, Strada and SEC, yes.

11 Q. And y'all talked about the potential of you doing some  
12 additional work for Balch & Bingham; is that right?

13 A. Yes.

14 Q. And you like Mr. Gilbert?

15 A. I do.

16 Q. All right. And always found Mr. Gilbert to be a  
17 transparent and honest person with you; is that right?

18 A. I did, yes.

19 Q. And always found him to be truthful; is that right?

20 A. Yes. To me, yes.

21 Q. Now, Ms. Carter, what I want to do is talk a little bit  
22 about -- you said that you've been involved in either sort  
23 of community activist work or community relations work  
24 since the age of 18; is that right?

25 A. Yes.

1 Q. And when you were 18 years old -- do I understand  
2 correctly you grew up in Selma, Alabama? Is that right?

3 A. That's right.

4 Q. And I think you testified on direct examination that  
5 from age 18, you had done some work on the annual Selma to  
6 Montgomery March celebration.

7 A. Yes.

8 Q. Is that right?

9 A. Yes.

10 Q. And am I understanding correctly, too, is that you got  
11 into that work based on a relationship that you had with  
12 Senator Hank Sanders from Selma? Is that right?

13 A. That's correct.

14 Q. And the way you got involved with that work for the  
15 Selma to Montgomery March with Senator Sanders is he was  
16 one of the individuals that helped organize that event; is  
17 that right?

18 A. Founder, yes.

19 Q. As a matter of fact, he's the founder of the foundation  
20 that puts that event on?

21 A. Correct.

22 Q. And the same was true, Senator Sanders was involved in  
23 that when the 50th anniversary event occurred as well; is  
24 that right?

25 A. That's right.

1 Q. And you're aware, are you not, through your work on the  
2 50th anniversary march that Senator Quinton Ross had a  
3 contract where he did some work on that particular event as  
4 well? Are you aware of that?

5 A. I wasn't.

6 Q. Okay. Now, when you got hired by SE+C and Strada, you  
7 got hired by them and you had a sort of a specific very  
8 limited purpose; is that right?

9 A. Yes.

10 Q. And that specific purpose was you'd go to community  
11 public meetings; is that right?

12 A. Uh-huh. Yes.

13 Q. You take down notes of what you see there?

14 A. Yes.

15 Q. And then you report back to either Mr. Glenn or  
16 Mr. Phillips; is that right?

17 A. That's right.

18 Q. Now, Ms. Carter, how are you making those reports? Were  
19 you doing that orally? Were you giving them something  
20 written? How was that happening?

21 A. Well, I would usually record them and then make notes on  
22 anything that I thought was extra, extra relative to  
23 revitalizing the community, which was what my conversation  
24 was and what my contract was about in talking about what  
25 the community wanted --

1 Q. Okay.

2 A. -- to rebuild and revitalize.

3 Q. Okay. And can you tell us, what were the meetings that  
4 you were going to? Where were they happening? Who was  
5 running those? Who was present?

6 A. Most of them would be at different churches. The EPA  
7 would call meetings and bring information just on updates  
8 on what was going on with the cleanup efforts. And then  
9 there would also be community leader meetings where it  
10 would be the citizens within the areas again telling their  
11 personal stories about their properties and about what they  
12 wanted and what their expectation was and their  
13 frustrations.

14 Q. Okay. And so it would be fair to say -- and nothing  
15 wrong with this, Ms. Carter -- you didn't have a lot of  
16 knowledge on environmental issues?

17 A. No.

18 Q. Is that right?

19 A. No.

20 Q. Had never dealt with the politics that surrounded  
21 environmental issues before; is that right?

22 A. No.

23 Q. That doesn't sound like that's actually what you were  
24 asked to go to those meetings for --

25 A. No.

1 Q. -- would that be fair to say?

2 A. No, sir.

3 Q. I mean, your focus was let me go hear about the sort of  
4 the community revitalization aspect of these meetings and  
5 report that back to Mr. Phillips and Mr. Gillen?

6 A. Yes.

7 Q. Did your role ever get to be anything larger than that  
8 out there?

9 A. No.

10 Q. And we saw, Mr. Ward showed you your bills or the bills  
11 that Strada sent to the client, to their client based on  
12 the work you did.

13 A. Yes, sir.

14 Q. And sometimes you worked on an hourly rate; would that  
15 be fair to say?

16 A. No, it was just a straight retainer.

17 Q. Okay. We saw some hours reported.

18 A. Yeah, I think they reported hourly, but I just had a  
19 monthly retainer that never changed.

20 Q. And your retainer never changed. And one of the reasons  
21 you do that in a community outreach situation is sometimes  
22 your work might be more and you might be really busy one  
23 month and the next month you may not have a lot going on;  
24 is that right?

25 A. Correct.

1 Q. But you just keep a flat fee because that makes sense  
2 for you and it makes sense for the client; is that right?

3 A. Correct.

4 Q. And you would have understood in this situation in these  
5 circumstances that Strada and SEC, they had a client  
6 ultimately that they had to satisfy; is that right?

7 A. Right. I found out later that -- yeah.

8 Q. Right. Right. And so you understand, then, that it  
9 would be the -- whatever client has hired SEC and Strada,  
10 it's ultimately their decision what type of community  
11 engagement work they want done and who is involved in that  
12 community engagement work; is that right?

13 A. Sure.

14 Q. And you certainly wouldn't have been privy to any  
15 discussions that maybe Balch & Bingham, Strada, SEC, or the  
16 Drummond Company had had about the type of community  
17 engagement work they were wanting?

18 A. No. Other than me.

19 Q. Yes, ma'am.

20 A. Other than myself.

21 Q. Other than yourself, right. And you wouldn't know  
22 whether or not Drummond as the client wanted more of a  
23 community engagement effort than what Strada and SE+C was  
24 providing them?

25 A. No.

1 Q. And you don't know what information Strada or SE+C was  
2 giving to Balch & Bingham, do you?

3 A. No.

4 Q. And you don't know if they ultimately may have  
5 determined that it -- they just weren't getting enough  
6 information from their client. You don't know if that may  
7 not be the case?

8 A. No.

9 Q. Now, in the time that you were out in the community  
10 doing community engagement, you came into contact with some  
11 other public officials; is that right?

12 A. Yeah, there would be a few there. Sure.

13 Q. And one of them was Councilman William Parker; is that  
14 right?

15 A. Yes.

16 Q. And he had some young ladies that he had out there doing  
17 community engagement for him; is that right?

18 A. That's right.

19 Q. Okay. And those were ladies that were doing community  
20 engagement with the North Birmingham Community Coalition;  
21 is that right?

22 A. Yes.

23 Q. And did you understand that the North Birmingham  
24 Community Coalition was an effort that was being funded by  
25 the EPA? Did you understand that?

1     A. Which part of it?

2     Q. Well, I don't know. I'm just asking. I'm asking --

3     A. The consultants or the dirt work?

4     Q. Yeah, I'm just asking if you knew at all whether the  
5       consultants, the dirt work, or anything was being done by  
6       the EPA?

7     A. Yes.

8     Q. Is it both? Were you aware that both were being done or  
9       maybe just the dirt work, or do you know?

10    A. Well, I knew that EPA was responsible for the actual  
11      cleanup, and I knew that the city had hired and William  
12      Parker had hired consultants that were also going out to  
13      engage the community and see, you know, what the  
14      temperature was within his district.

15    Q. All right. And you described the work you've done in  
16      your career as either community activism or community  
17      outreach; is that right?

18    A. Right.

19    Q. And I think you mentioned that includes some politics  
20      from time to time; is that right?

21    A. Sure.

22    Q. Nothing unusual in your career doing community activism  
23      and community outreach about interacting with public  
24      officials on issues; is that correct?

25    A. No. Not at all.

1 Q. Issues like this facing the community, nothing unusual  
2 about having public officials involved?

3 A. No.

4 Q. And let me ask you this, Ms. Carter. You grew up in  
5 Selma; is that right?

6 A. That's right.

7 Q. And currently you live in Hoover, Alabama?

8 A. That's right.

9 Q. Is that right?

10 A. Uh-huh.

11 Q. Pretty good distance away from the 35th Avenue Superfund  
12 Site?

13 A. Sure.

14 Q. And how long have you been in Hoover?

15 A. In Hoover, probably eight to ten years.

16 Q. Okay. And so did you come straight there when you moved  
17 from the Selma, Montgomery --

18 A. No, I lived in Center Point.

19 Q. Okay. But for the last eight to ten years, you've been  
20 in Hoover?

21 A. That's correct.

22 MR. ESSIG: No further questions.

23 THE COURT: Thanks.

24 Who's up next?

25 MS. HODGES: Your Honor, I have no questions for this

1 witness. Thank you, Ms. Carter.

2 THE COURT: Thank you, Ms. Hodges.

3 Mr. Bloomston, your witness.

4 CROSS-EXAMINATION BY MR. BLOOMSTON:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. My name is Brett Bloomston, and I am an attorney for  
8 David Roberson. I believe you testified that you had met  
9 Mr. Roberson once at a meeting.

10 A. Yes.

11 Q. And that meeting was in April of 2015; does that sound  
12 right?

13 A. Round about.

14 Q. Okay. And you were asked a question by Mr. Ward about  
15 the outreach. And I believe Mr. Ward's question was when  
16 you met with them, you weren't aware that any community  
17 outreach had begun yet. Do you remember --

18 A. Mr. Ward?

19 Q. Yes, from the government.

20 A. Oh, okay. I'm sorry. I'm sorry.

21 Q. Do you remember being asked that question?

22 A. Yes.

23 Q. Now, when you signed a contract or you began your work  
24 with Strada, that was in January of 2014, correct?

25 A. Round about, yes.

1 Q. Okay. So you would have gotten out into the community  
2 and started your -- it's been described to us as reactive  
3 outreach. In other words, you're listening, you're  
4 absorbing things, and you're taking that back to the folks  
5 at Strada.

6 A. That's right.

7 Q. All right. So if that started in 2014 and you're  
8 attending these meetings, you're not aware of what the  
9 Balch law firm or Drummond is doing parallel to what you're  
10 doing, are you?

11 A. No.

12 Q. Are you aware that they may have been in the communities  
13 knocking on doors, getting things signed --

14 A. No.

15 Q. -- distributing information, fliers, things like that?

16 A. No.

17 Q. And that would be a more proactive community engagement,  
18 correct?

19 A. That's correct.

20 Q. Okay. And that's something that you're used to seeing,  
21 correct?

22 A. Sure.

23 Q. Okay. And you have been asked this question before  
24 today. The work that you did in the communities in Tarrant  
25 and Inglenook, do you believe that it was beneficial to

1 those communities?

2 A. I thought so, yes.

3 Q. Okay. And do you think it was beneficial because you  
4 were helping get more information to those citizens?

5 A. Well, I was hoping -- because, again, I never gave -- I  
6 never engaged, but I was hoping that it would start a  
7 partnership between the communities at the grassroots level  
8 and the corporate community that would assist in rebuilding  
9 those communities.

10 Q. I'm going to give you credit for one of my favorite  
11 quotes I've heard in a long time. You said that if you're  
12 not at the table, you're on the menu.

13 A. On the menu.

14 Q. And what you meant by that is that you would have liked  
15 to see these communities and these corporations get  
16 together; is that correct?

17 A. That's correct.

18 MR. BLOOMSTON: Okay. Thanks for your testimony.

19 THE COURT: Any redirect?

20 MR. WARD: No, Your Honor.

21 THE COURT: Ms. Carter is free to go, I'm assuming?

22 MR. MARTIN: Yes, sir.

23 MR. BLOOMSTON: Yes.

24 THE COURT: Ms. Carter, have a good evening.

25 (Witness excused.)

1           THE COURT: Who is your next witness?

2           MR. WARD: The government calls Patrick Runge.

3           THE COURT: Mr. Runge, good evening.

4 (Witness sworn.)

5           THE COURTROOM DEPUTY: Please state and spell your  
6 first and last name for the record.

7           THE WITNESS: It's John Runge, J-o-h-n R-u-n-g-e.

8           THE COURTROOM DEPUTY: What city and state do you  
9 reside in?

10          THE WITNESS: Homewood, Alabama.

11                           PATRICK RUNGE,

12          duly sworn, was examined and testified as follows:

13          DIRECT EXAMINATION BY MR. WARD:

14          Q. Good evening, Mr. Runge. Where do you work?

15          A. At Balch & Bingham.

16          Q. How long have you worked there?

17          A. This is my ninth year.

18          Q. What's your position?

19          A. I'm an associate attorney.

20          Q. Before you got to Balch, what did you do?

21          A. I taught high school one year in Atlanta as a religion  
22 teacher. Then I did youth ministry for three years in  
23 Washington, D.C. And then I was a paralegal at a law firm  
24 in Washington, D.C. as well.

25          Q. Could you give us your educational background?

1     **A.** I went to college at Emory in Atlanta, and I went to law  
2     school at Notre Dame in Indiana.

3     **Q.** Do you have a law degree?

4     **A.** Yes, sir.

5     **Q.** During your time at Balch, have you been assigned to a  
6     particular section?

7     **A.** I started off in the litigation section for the first  
8     three years I was at Balch, and then I switched to the  
9     environmental section, and I've been there since then.

10    **Q.** So were you in the environmental section during 2014,  
11    '15, and '16?

12    **A.** Yes.

13    **Q.** And during that period, did you focus your time at work  
14    on environmental matters?

15    **A.** Yes.

16    **Q.** Did you work with a number of partners in the section?

17    **A.** Yes, I worked with all the partners in the section.

18    **Q.** Okay. Was Joel Gilbert a partner in the section?

19    **A.** Yes, he was.

20    **Q.** Did you work with Joel Gilbert?

21    **A.** I did.

22    **Q.** What about Steve McKinney?

23    **A.** Yes. He was the head of the section.

24    **Q.** Okay. Did you do work with him during this period?

25    **A.** I did.

1 Q. During the 2014 and '15 period, how much of your work  
2 would you say you got from Mr. Gilbert?

3 A. Probably about -- it's hard to estimate because it would  
4 change daily or weekly, but sometimes the majority of my  
5 work and sometimes not as much but probably about 10 or 20  
6 percent or so. It's hard to estimate. I'm sorry.

7 Q. Did you get a fair amount of work from Mr. Gilbert sort  
8 of throughout the 2014 and '15 year?

9 A. Yes.

10 Q. Was he a partner you worked -- was he one of the  
11 partners you worked with most?

12 A. He -- yes, probably.

13 Q. At some point, Mr. Runge, did you begin working on  
14 matters involving Drummond Coal Company?

15 A. Yes.

16 Q. When was that?

17 A. I think it was in the fall of 2014 or late summer of  
18 2014.

19 Q. Did you know whether at that time Drummond was already a  
20 client of Balch?

21 A. I think Drummond had become a client of Balch shortly  
22 before I started working for them.

23 Q. Shortly before you started at Balch or shortly before  
24 you started working for Drummond?

25 A. For Drummond. I'm sorry.

1 Q. Okay. Do you know who at Balch was involved in getting  
2 the work from Drummond?

3 A. I know that Joel was heavily involved, and I think Steve  
4 was somewhat too.

5 Q. So Mr. Gilbert and Mr. McKinney both?

6 A. Yeah.

7 Q. Did you work on matters for Drummond involving the 35th  
8 Avenue Superfund Site?

9 A. Yes, I did.

10 Q. Okay. Did you work on a matter involving the proposed  
11 listing of that site on the National Priorities List?

12 A. Yes.

13 Q. Did you work on a matter involving the proposed  
14 expansion of that site into Tarrant?

15 A. I did some work on that too.

16 Q. Did you do more work for one of the two matters?

17 A. I did. I did a lot more work at the beginning in the  
18 initial listing process and less work with the Tarrant  
19 stuff.

20 Q. Okay. What type of work did you do on these matters?

21 A. My role is mainly in legal research. So different  
22 issues would arise, and I would be asked to look into --  
23 just research different aspects of them.

24 Q. Who did you typically get your work from with respect to  
25 these matters?

1       **A.** The majority of the work I think was probably from Joel,  
2 but some of it may have come from Steve too.

3       **Q.** Okay. And was the typical process that you would get an  
4 assignment or project, you would complete the project, and  
5 then you would report back or provide that work product to  
6 the partner?

7       **A.** Yes.

8       **Q.** Did your work include drafting white papers?

9       **A.** Yes, it did.

10      **Q.** Okay. Did it include drafting comments?

11      **A.** Yes.

12      **Q.** Comments that were submitted to the EPA?

13      **A.** Yes.

14      **Q.** And did it include comments that were submitted to the  
15 EPA on behalf of Drummond or ABC Coke?

16      **A.** I think I did work on some aspects of their comments.

17      **Q.** Okay. Did it also include work on comments on behalf of  
18 the attorney general?

19      **A.** Yes.

20      **Q.** And did your work include drafting memos on various  
21 legal issues?

22      **A.** Yes.

23      **Q.** Over the course of your work on these matters, did you  
24 have periodic interaction with Mr. Gilbert and Mr. McKinney  
25 on them?

1     A. I did.

2     Q. Okay. Did you have meetings with them?

3     A. Yes, we'd have office meetings and things like that.

4     Q. How else did you communicate?

5     A. Over the phone or over email.

6     Q. Would you say you had pretty regular communication with  
7     them?

8     A. Yes.

9     Q. On these issues?

10    A. Uh-huh.

11    Q. Okay. Did Balch hold internal staff meetings at some  
12    point to discuss the Drummond matters?

13    A. We did. So I think when we first got -- when Balch  
14    first got Drummond as a client, Mr. McKinney and  
15    Mr. Gilbert would hold meetings where they would -- we  
16    would just -- they would just discuss the different issues  
17    that were going on and make sure that everyone was covering  
18    all their bases and the client was getting served.

19    Q. Did you attend some of those meetings?

20    A. I did.

21    Q. Did other attorneys attend some of those meetings?

22    A. Yes.

23    Q. Okay. In a typical meeting, how many attorneys would be  
24    in the room?

25    A. Probably about eight.

1 Q. Who typically led the meetings?

2 A. I think it would depend on -- they weren't always  
3 necessarily formally led, but whoever had an issue to talk  
4 about. And Steve, Mr. McKinney, he was our section head,  
5 so he kind of naturally led a lot of things. And then Joel  
6 would lead sometimes too.

7 Q. We've been talking in general terms about the 2014-2015  
8 time frame. In particular at the end of 2014 and the  
9 beginning of 2015, did you devote a good portion of your  
10 time during those months to the 35th Avenue Superfund  
11 issues?

12 A. Yes.

13 Q. Okay. And were you working on the NPL issue or the  
14 Tarrant issue during that period?

15 A. The NPL issue.

16 Q. And why do you recall that period in particular as being  
17 an active period?

18 A. EPA had proposed listing the site on -- the 35th Avenue  
19 site on the National Priorities List, on the NPL. And so  
20 we were responding and drafting comments.

21 Q. You were responding and drafting comments to be  
22 submitted to the EPA --

23 A. Yes.

24 Q. -- in January 2015?

25 A. Yes.

1 Q. Did you interact with Mr. Gilbert and Mr. McKinney  
2 during this time period?

3 A. Yes.

4 MR. WARD: Could we pull up Government's Exhibit 129 at  
5 page 327?

6 Q. And look at the bottom entry on the --

7 MR. WARD: I'm sorry. Maybe the page just before.  
8 326. Okay.

9 Q. Mr. Runge, during this period, did you ever learn from  
10 Mr. Gilbert or Mr. McKinney that there were discussions  
11 ongoing about engaging Oliver Robinson or Oliver Robinson's  
12 foundation to work for Balch and Drummond?

13 A. I don't remember anything like that. I wasn't really  
14 involved in that aspect of the project.

15 Q. Okay. When you say "that aspect of the project," what  
16 aspect do you mean?

17 A. Well, there was just different things going on. And so  
18 I guess this was more the Tarrant stuff, and I just  
19 wasn't as -- at this point, I wasn't very involved in the  
20 Tarrant -- in what was going on in Tarrant and what we were  
21 doing up in Tarrant. So because I don't -- because I  
22 wasn't involved, I can't describe it very well.

23 Q. But you were very involved in NPL issues?

24 A. Yes, that's what I was at this point --

25 Q. Was that the focus of your energy in January of --

1 December of 2014 and January of 2015?

2 A. This was a lot of it and just doing research on various  
3 legal issues that arose.

4 Q. Okay. Did you ever learn from Mr. Gilbert or  
5 Mr. McKinney during this period that there were discussions  
6 ongoing to engage Oliver Robinson's foundation to do work  
7 regarding the NPL issues?

8 A. I don't remember anything about that.

9 Q. In the 2014 and 2015 time frame, do you recall any  
10 discussion at Balch of Oliver Robinson or his foundation  
11 doing work for Drummond?

12 A. No.

13 Q. Okay. During that time frame, 2014 and 2015, do you  
14 recall ever hearing the name "Oliver Robinson Foundation"?

15 A. I don't remember it specifically, no.

16 Q. Do you recall it during any of the staff meetings that  
17 you described?

18 A. No.

19 Q. Mr. Runge, at some point in mid 2015, did you draft a  
20 resolution on the Superfund issues?

21 A. Yes.

22 Q. Okay. Did someone ask you to do that?

23 A. Yes, Joel did.

24 Q. Do you recall how he asked you?

25 A. I had -- I recall him calling me on the phone and

1 discussing it. That's my memory.

2 Q. Okay. Did he give you instruction or direction on what  
3 he wanted the resolution to say?

4 A. I can't really remember the specifics, but I just  
5 remember him asking for a resolution, and then what's in  
6 the resolution that I drafted would have been what he  
7 requested.

8 Q. Do you know how Mr. Gilbert intended to use the  
9 resolution?

10 A. Well, my understanding was that we would -- and I  
11 didn't -- I can't remember at the time if there was already  
12 somebody lined up or not, but a state legislator would --  
13 if they agreed with the positions would enter it into or  
14 would propose it or whatever the legal -- the legislative  
15 process is. And then the state legislator -- legislature  
16 would vote on it as either a show of support for the  
17 resolution or against it.

18 Q. Okay. And assuming that the draft resolution was  
19 ultimately passed by the legislature, how would Mr. Gilbert  
20 have planned to use it, if you know?

21 A. I don't know the specifics, but -- and just in general,  
22 he would have used that as a -- just to show that --  
23 general support for that position in various contexts.

24 Q. Do you know whether the resolution was ultimately  
25 passed?

1 A. I think it was.

2 MR. WARD: Let's look at Government's Exhibit 129 at  
3 377, Ms. Borden, and look at the two -- the entries on  
4 May 18 for Mr. Gilbert and Mr. Runge.

5 Q. Mr. Runge, do you see an entry by your -- are your  
6 initials JPR?

7 A. Yes, they are.

8 Q. Do you see an entry dated May 18, 2015 that says "Draft  
9 Alabama legislative joint resolution"?

10 A. Yes.

11 Q. That was regarding oversight of EPA environmental  
12 justice activities throughout Alabama?

13 A. Yes.

14 Q. Was May 18, 2015 the day that you were asked to start  
15 working on this resolution?

16 A. If it's the first day that I have a time entry for it,  
17 which it appears to be, then I would say yes.

18 Q. Did you send Mr. Gilbert the draft after you finished  
19 it?

20 A. Yes.

21 Q. Did he edit it?

22 A. Yes, I think he did.

23 Q. And are you aware whether he ultimately passed that on  
24 to be sponsored by someone in the legislature?

25 A. That's what I recall.

1 Q. And looking at the top entry on the -- it's magnified  
2 here. Do you see an entry for Mr. Gilbert, same day, that  
3 says "Prepare for and attend meeting with Messrs. David  
4 Roberson and Oliver Robinson regarding community outreach;  
5 office conference with S. McKinney regarding status of  
6 various issues"? Do you see that?

7 A. Yes.

8 Q. When Mr. Gilbert called you to ask you to draft the  
9 resolution, did he say anything about having been in a  
10 meeting with Mr. Roberson and Oliver Robinson that same  
11 day?

12 A. I don't remember him mentioning anything like that.

13 (Government's Exhibit 91 was referenced.)

14 MR. WARD: Go to Government's Exhibit 91, Ms. Borden.

15 Q. And you see, Mr. Runge, here on the first page SJR 97 by  
16 Senator Waggoner?

17 A. Yes.

18 Q. And the date stamp of June 4, 2015?

19 A. Yes.

20 Q. Which was, I suppose, a couple of weeks after the time  
21 entries we just looked at? Okay.

22 MR. WARD: Can you go to the second page of that  
23 resolution? Just magnify the entire second page.

24 Q. Does this page, Mr. Runge, seem familiar to you as the  
25 first page of the resolution that you drafted?

1 A. It looks like it, yes.

2 MR. WARD: Nothing further, Your Honor.

3 THE COURT: Thank you, Mr. Ward.

4 Cross-exam?

5 MR. DOSS: Yes, Your Honor.

6 CROSS-EXAMINATION BY MR. DOSS:

7 Q. Good afternoon, Mr. Runge. My name is Jeff Doss, and  
8 I'm one of the attorneys representing Mr. Joel Gilbert. I  
9 just have some follow-up questions for you. But I'm going  
10 to start with generally the kind of work you were doing  
11 with respect to the Drummond matters.

12 Is it fair to say that you probably billed hundreds of  
13 hours to Drummond-related work concerning at least the  
14 35th Avenue NPL issue?

15 A. That's definitely possible.

16 Q. You mentioned that you did some legal research. That  
17 was a big part of the work that you were doing for  
18 Drummond?

19 A. Yes.

20 Q. I understand what you mean by legal research, but help  
21 us understand what you mean by legal research, please.

22 A. So, in this context, basically EPA had proposed that  
23 certain area of town should be listed on the National  
24 Priorities List. And if you get on the National Priorities  
25 List, EPA -- it makes you a priority for EPA to investigate

1 and then they can -- oh, I'm sorry. I apologize.

2 Q. Let me clarify. Even more fundamental than that, when  
3 we talk about legal research generally, it's typically not  
4 going to a library and pulling a book off a shelf.

5 A. Oh, no. I'm sorry. Right.

6 Q. Right. You have something maybe called Westlaw, right?

7 A. Yes.

8 Q. And you have access to cases and opinions and statutes  
9 and regulations and administrative law and a whole host of  
10 legal research tools, correct?

11 A. Yes.

12 Q. And so as part of your legal research that you were  
13 doing on these Drummond matters, you were consulting this  
14 wide array of legal authority in helping you come up with  
15 legal strategies and legal opinions on the issues related  
16 to these Drummond matters, correct?

17 A. Yes. I wasn't involved as much in the strategy, but  
18 yes.

19 Q. And fair point. So you might have been tasked by  
20 Mr. Gilbert, for example, to go and research a particular  
21 issue related to CERCLA, which is the Superfund law. And  
22 then you would go consult that legal authority and you  
23 would look at how courts have interpreted the law, how  
24 agencies had interpreted the law. Then you would report  
25 your findings back to Mr. Gilbert, correct?

1     **A.** Yes.

2     Q. Okay. And you mentioned that you drafted memos,  
3     correct?

4     **A.** Yes.

5     Q. When you're talking about a memo in the legal context,  
6     is it fair to say that's sort of like an interoffice  
7     research paper?

8     **A.** Yeah. So a memo can be more or less formal. And I'd  
9     say it's usually -- in this context, it's usually an answer  
10    to a question in a kind of a more or less formalized form.  
11    It could be an email or it could be a piece of paper with  
12    the word "memo" on top of it.

13    Q. Certainly. And that would reflect your legal analysis  
14    of an issue that you had been asked by another attorney at  
15    Balch to research, correct?

16    **A.** Yes.

17    Q. So Mr. Gilbert might ask you a particular question about  
18    CERCLA. You consult the research, you write up your  
19    analysis, and you provide that answer to Mr. Gilbert, for  
20    example, correct?

21    **A.** Yes.

22    Q. And you drafted white papers, correct?

23    **A.** Yes.

24    Q. And white papers are typically the same idea. It's a  
25    legal analysis, but it would be generally something that

1 you would share outside of the firm, correct?

2 A. Yes.

3 Q. You might share it with a client, right?

4 A. Yes.

5 Q. You might share it with public officials, correct?

6 A. Yes.

7 Q. Okay. And you also mentioned that you assisted in  
8 preparing Drummond's comments to the EPA. Do you remember  
9 that?

10 A. Yes.

11 Q. Okay. And there were lots of lawyers who were involved  
12 in that process, right?

13 A. With the drafting of the comments?

14 Q. Yes, sir.

15 A. On different levels. I drafted -- I did a lot of the --  
16 yes, but I did a lot of Drummond work.

17 Q. And those comments reflected again a legal analysis of  
18 the issue that the EPA was considering, correct?

19 A. Yes.

20 Q. And in general, Mr. Runge, you would agree with me that  
21 throughout your involvement with the Drummond matters, you  
22 were convinced or at least you had convinced yourself of  
23 the rightness of the legal conclusions that you were  
24 reaching in providing the advice to Drummond, correct?

25 MR. WARD: Objection. Relevance.

1           THE COURT: As to this question only, overruled.

2       A. I was convinced that the positions that we were taking  
3       were defensible legally.

4       Q. (BY MR. DOSS:) Now, you mentioned that you assisted in  
5       the preparation of comments for the Attorney General. Do  
6       you remember that?

7       A. Yes.

8           (Government's Exhibit 189 was referenced.)

9           MR. DOSS: If we could look at Government's  
10          Exhibit 189, please?

11          Q. Let's look at the second page. Do you recognize these,  
12          Mr. Runge, as those comments you were involved with helping  
13          draft?

14       A. Yes.

15          Q. And there were other lawyers at Balch who were also  
16          involved in that process, correct?

17       A. Yes.

18          Q. Adam Israel was also involved, right?

19       A. Yes.

20          Q. And Mr. Gilbert was overseeing your work on this  
21          project, right?

22       A. Yes.

23          Q. And he was overseeing other attorneys in the office,  
24          their work on the Drummond-related matter, correct?

25       A. Yes.

1 Q. All right. You had some questions about the Oliver  
2 Robinson Foundation, and you said, "I wasn't familiar with  
3 that aspect of the project," correct?

4 A. Yes.

5 Q. And that aspect of the project, as you understand it,  
6 would be the community outreach aspect of the project,  
7 right?

8 A. Yes.

9 Q. And is it fair to say that in these large, complicated  
10 legal projects, when you have lots of lawyers involved, an  
11 associate, for example, like yourself, you may not be aware  
12 of every detail of that project that every other attorney  
13 is working on?

14 A. Yeah -- yes, that's correct.

15 Q. Now, I want to shift gears and talk about the  
16 resolution, Mr. Runge.

17 MR. DOSS: If we could look at Government's Exhibit  
18 Number 91, please.

19 (Defendant's Exhibit 551 was referenced.)

20 Actually, before we go there, let's look at  
21 Defendant's Exhibit 551 at page 137.

22 Q. Mr. Runge, these are the invoices from Balch to Drummond  
23 on the 35th Avenue Superfund Site. Am I correct that your  
24 initials are JPR?

25 A. Yes.

1 Q. Okay. So let's look at May 18, 2015. And that's the  
2 entry that Mr. Ward covered with you on direct examination,  
3 correct?

4 A. Yes.

5 Q. And that would be 3.3 hours?

6 A. Yes.

7 Q. And just so we're all clear, lawyers, they typically  
8 bill in tenth-of-an-hour increments, right?

9 A. Right.

10 Q. So that would be approximately how many minutes?

11 A. 18 minutes.

12 Q. So it's 3 hours and 18 minutes on May 18. And then if  
13 we look down a little further, we have a May 20, 2015 entry  
14 for you. And it looks like you're continuing to draft and  
15 edit that joint resolution, right?

16 A. Part of the entry is about that, yes.

17 Q. And that's a good point. The total amount of time  
18 reflected here is 6 hours -- 6.7 hours, correct?

19 A. Yes.

20 Q. And that day you spent or billed to Drummond about 6.7  
21 hours. Of that 6.7 hours, some fraction of it was devoted  
22 to the drafting and editing of the joint resolution?

23 A. Yes.

24 Q. And there were other things you were doing that day too?

25 A. Yes.

1 Q. Okay. And as a general rule, when you did work on --  
2 when you did work for a client, you wrote it down, you kept  
3 track of your time?

4 A. Yes.

5 Q. So let's look now at Government's Exhibit 91, the  
6 resolution. Now, Mr. Runge, you understand generally that  
7 a resolution is an expression of the legislature's opinion.  
8 Is that a fair characterization of it?

9 A. It's a -- yeah, I guess so. It's an expression of the  
10 majority of the legislators' opinions.

11 Q. Good point. It has to have a majority of both houses of  
12 the legislature to be passed, right?

13 A. Right.

14 Q. And a resolution like this one, SJR 97, it doesn't  
15 require anyone to do anything, right?

16 A. Yes.

17 Q. And it doesn't prohibit anyone from doing anything,  
18 right?

19 A. Right.

20 Q. And it doesn't appropriate public funds, does it?

21 A. No.

22 Q. And that's in contrast to what's called a bill?

23 A. Yes.

24 Q. And that's not what this is, right?

25 A. No.

1 Q. Now, do you recall a Mr. Trey Glenn providing some input  
2 on the drafting of this resolution?

3 A. I don't recall that, but I did see an email that --  
4 where his name was on it.

5 Q. Okay. Any reason to doubt that Mr. Glenn did provide  
6 some input on the drafting of this resolution?

7 A. No.

8 Q. And did you understand that Mr. Trey Glenn was a  
9 consultant hired by Balch to assist in its representation  
10 of Drummond?

11 A. I'm not -- I don't know if I was aware of that at the  
12 time, but that would have been consistent with our  
13 practice.

14 Q. And during your conversations with Mr. Gilbert about the  
15 drafting of SJR 97, Mr. Oliver Robinson's name never came  
16 up; isn't that true?

17 A. I don't remember it ever coming up.

18 Q. And, in fact, if you look here on the first page, it  
19 indicates a Senator Waggoner. Do you see that?

20 A. Yes.

21 Q. In your experience, does that indicate to you that  
22 Senator Waggoner introduced SJR 97?

23 A. It does.

24 Q. Now, in 2015 was it your understanding that the Alabama  
25 House of Representatives had a Republican majority?

1       **A.** Yes.

2       **Q.** And in 2015 was it your understanding that the Senate  
3 also had a Republican majority?

4           **MR. WARD:** Objection to relevance.

5           **THE COURT:** Sustain your objection.

6           **MR. DOSS:** If we look on page -- let's see.

7       Second-to-last page, please. One more. Keep going. Okay.

8       **Q.** Does this signature page indicate to you, Mr. Runge,  
9 that SJR 97, in fact, passed both houses of the legislature  
10 and was signed by Governor Bentley?

11      **A.** Yes.

12     **Q.** And just to be clear, as far as you can tell from this  
13 page, Mr. Oliver Robinson's name doesn't appear anywhere  
14 there, does it?

15      **A.** No.

16           **MR. DOSS:** If we could look at page 2 of this exhibit.

17     **Q.** So just to help us understand, I notice in this it has  
18 several sentences that begin with "whereas." And then it  
19 has several sentences that begin with "be it resolved."  
20 What is a "whereas" clause of a resolution?

21      **A.** It's kind of like the -- it's kind of the background  
22 information that's kind of building up to the resolution.  
23 So you're saying because of this and because of this and  
24 because of this, therefore, we declare this.

25     **Q.** And when you were assisting in drafting SJR 97, did

1       these "whereas" clauses reflect the results of your legal  
2       research?

3       **A.** They look -- yes, they look consistent with it.

4           MR. DOSS: And then let's look at page -- fourth page of  
5       this exhibit, please.

6       Q. All right. And Mr. Runge, we see here what I was just  
7       mentioning, the "be it resolved" and "be it further  
8       resolved" paragraphs. Do you see that?

9       **A.** Yes.

10      Q. And it says "Be it resolved by the Legislature of  
11       Alabama, both Houses thereof concurring, that we urge the  
12       EPA to reconsider its proposal to include the 35th Avenue  
13       site on the NPL without the support of the state," correct?

14      **A.** Yes.

15      Q. And there the legislature is urging the EPA to do  
16       something, right?

17      **A.** Yes.

18      Q. It's not requiring the EPA to do anything?

19      **A.** It can't.

20      Q. Fair point. And there are several more "be it further  
21       resolved" paragraphs there, right?

22      **A.** Yes.

23      Q. Now, on direct, you testified that from time to time you  
24       received work assignments from Mr. Gilbert and others at  
25       Balch, correct?

1 A. Yes.

2 Q. But to be clear, Mr. Gilbert was not your client, right?

3 A. No.

4 Q. Drummond was your client?

5 A. Yes.

6 Q. And as a licensed attorney in the state of Alabama, you  
7 owe duties of loyalty to your client, right?

8 A. Yes.

9 Q. And that duty of loyalty guided you throughout the  
10 hundreds of hours that you worked on this matter, correct?

11 A. Yes.

12 MR. DOSS: One moment, Your Honor. Thank you for your  
13 time, Mr. Runge. No further questions, Your Honor.

14 THE COURT: Thank you, Mr. Doss.

15 Mr. McKnight?

16 CROSS-EXAMINATION BY MCKNIGHT:

17 Q. Mr. Runge, I'm David McKnight. I represent Steve  
18 McKinney in this matter. You know Steve. You work with  
19 Steve, correct?

20 A. Yes.

21 Q. And you testified that the vast majority of your  
22 projects came from people other than Steve with regard to  
23 the 35th Avenue site, correct?

24 A. Yes.

25 Q. Okay. And I want to focus on the projects that involved

1 Steve. That was all legal research, correct?

2 A. Yes.

3 Q. Okay. And so basically, any sort of communications or  
4 meetings that you would have with Steve involved legal  
5 research with regard to this project?

6 A. Yes.

7 Q. Okay. And so what that would be is Mr. McKinney would  
8 say, "Patrick, you know, here's an issue. Please go find  
9 the law on this area and tell me what it is," or, "We need  
10 to inform other people of what it is," or something along  
11 those lines, correct?

12 A. Yes.

13 Q. Okay. And the environmental law area is to ordinary  
14 people a very complicated, technical area; wouldn't you  
15 agree?

16 A. It is.

17 Q. Okay. And you have laws and you have statutes and you  
18 have regulations.

19 A. Yes.

20 Q. Okay. And you have deadlines that if you don't meet  
21 those deadlines, you're foreclosed from presenting comments  
22 or things along those lines, correct?

23 A. Yes.

24 Q. Okay. And there's procedures that have to be followed  
25 in this very technical area?

1     **A.** Yes.

2     Q. And so what you would be doing, you would go research  
3     and look up the law, the statutes, and the regulations.  
4     You'd put it down on paper, and you'd bring that back to  
5     Mr. McKinney, correct?

6     **A.** Yes.

7     Q. And then that would either be to educate Mr. McKinney or  
8     it would be to educate other people, whether it be the EPA  
9     or ADEM or the client or whoever it may be, but it was  
10    educating people with regard to the applicable law,  
11    correct?

12    **A.** Yes.

13    Q. Okay. And you've worked with Mr. McKinney for nine  
14    years? Well, the three years in litigation and then six  
15    years you have been in the environmental section, correct?

16    **A.** Yes.

17    Q. And all the time you have been working with  
18    Mr. McKinney, has he ever asked you to do anything improper  
19    or illegal?

20    **A.** No.

21            MR. McKNIGHT: Thank you. That's all I have.

22            THE COURT: Thank you, Mr. McKnight.

23            MR. BOUCHARD: No cross, Your Honor.

24            THE COURT: Thank you, Mr. Bouchard.

25            Redirect for your witness?

1 MR. WARD: No, Your Honor.

2 THE COURT: Thank you.

3 Mr. Runge, you're free to go, sir.

4 THE WITNESS: Thank you.

5 THE COURT: I'm assuming he's released from his  
6 subpoena?

7 MR. WARD: Yes, Your Honor.

8 THE COURT: Have a good night.

9 (Witness excused.)

10 THE COURT: Ladies and gentlemen of the jury, it's 9  
11 minutes before 6:00. Rather than start a witness and  
12 stopping very early into his or her testimony, let's stop  
13 here for the day.

14 Let me remind you again, please do not discuss this  
15 case as a group or with anyone else. And again, if anyone  
16 approaches you about it, please let me know.

17 We will start at 9:00 a.m. in the morning and will end  
18 roughly around 5:30 tomorrow. Have a good night, everyone.  
19 And, obviously, please do not read or watch anything about  
20 this case at all. Thanks, everyone.

21 (The following proceedings were had in open court  
22 outside of the presence and hearing of the jury.)

23 MR. SHARMAN: Your Honor, may I be briefly heard on a  
24 scheduling question?

25 THE COURT: You may.

1           MR. SHARMAN: Your Honor, I believe the Court had  
2 expressed a hope earlier that the case would be ready so  
3 that the jury would have it by or even before the end of  
4 the month. My inquiry was that if --

5           THE COURT: It's contingent on when they finish. And I  
6 don't know anything about the defendants' cases obviously.

7           MR. SHARMAN: Yes, sir. And I'm not trying to put any  
8 burdens on anybody's presentation of the case. But if it  
9 is the case, Your Honor, that, for example, the government  
10 were to rest this week, let's say Thursday or Friday  
11 morning, then I wanted to ask the Court how it might  
12 consider handling any potential Rule 29 motions and the  
13 Court's entertainment of those.

14           I believe, Your Honor -- obviously, the Court can  
15 schedule as it wishes. But I believe, Your Honor, that  
16 given where we are, that it would be possible to accomplish  
17 the Court's goal schedule-wise something like the  
18 following: that if, in fact, the government were to rest  
19 Thursday or Friday morning, the Court could tell the jurors  
20 that they have been working hard and that they have that  
21 day off, which would be a short day by the Court's schedule  
22 anyway.

23           The Court could consider on Thursday afternoon or  
24 Friday morning any Rule 29 motions and potentially address  
25 any jury instruction issues.

1           THE COURT: That's the easy part. I agree with you  
2 wholeheartedly. The hard part is if they end at noon on  
3 Friday, for example, I've got a full afternoon of other  
4 things. So we may need to carry over motions to Monday  
5 morning. But that will be the plan, will be to release the  
6 jury for either the afternoon or morning, take up the  
7 motions, and then resume, assuming motions are denied, the  
8 next business day.

9           MR. SHARMAN: And, Your Honor, would it be -- just  
10 again planning ahead, assuming the motions are denied in  
11 part or in whole and assuming defense case or cases  
12 proceed, would the Court, for purposes of efficiency, would  
13 the Court object to essentially a joint defense? And by  
14 that, I mean that witnesses could be called by any party.  
15 The jury doesn't usually seem to mind or know the  
16 difference, and that seems to work well.

17           THE COURT: I will definitely entertain that. I think  
18 one of the charges that the defendants are proposing deals  
19 with the defendants' willingness for efficiency reasons to  
20 confer and consult. I'm definitely in favor of that. I  
21 will defer to you guys on how to proceed.

22           My goal obviously for now is to give you a draft charge  
23 to have to look at over the weekend.

24           Is the government still on track, you believe, to be  
25 finished by Thursday? I know you lost an hour yesterday

1       afternoon when we were dealing with the issue that came up  
2       during the lunch hour.

3            MR. MARTIN: Judge, I fully expect to rest on Thursday.

4            THE COURT: Okay. Then we may -- if that's the case,  
5       let's keep Friday morning, depending on what time Thursday  
6       the government ends, at a minimum Friday morning for  
7       motions. We may, depending on what time Thursday, begin  
8       arguments on Thursday afternoon as well.

9            Okay. I think I have addressed your question,  
10      Mr. Sharman. Anyone else?

11            MR. GILLEN: Your Honor, just to be clear.

12            THE COURT: Uh-huh.

13            MR. GILLEN: Under that scenario, then, if the --  
14       obviously we're hoping or we're hopeful that our motion is  
15       going to be granted. If the defense motions are not  
16       granted, then the defense cases would start Monday morning;  
17       is that correct?

18            THE COURT: Yeah. There's no way -- we're supposed to  
19       end at 1:00 on Friday anyway. Mr. Martin, I know this is  
20       all contingent on cross-exams before I definitively tell  
21       Mr. Gillen yes. Based on how we're going right now, what  
22       time Thursday -- morning or afternoon -- will you  
23       anticipate the government will rest?

24            MR. MARTIN: Could very well be morning, Your Honor.

25            THE COURT: Okay. Assuming motions are denied, why

1 don't the defendants have at least a witness or two ready  
2 for Friday, please. We may not -- depending on how long it  
3 takes to address motions on Thursday, we may not even call  
4 anyone, but just to be on the safe side, I want to use  
5 Friday morning if possible. Okay. Check all witnesses --  
6 yes, sir.

7 MR. ASBILL: I'm sorry, sir. It would be very helpful  
8 to us in terms of what we do in the defense case to know  
9 what the Court's instructions are going to be, assuming  
10 that nothing new happens that would alter those  
11 instructions either in the defense case or in a rebuttal  
12 case.

13 THE COURT: My plan, as always, is not working neatly  
14 here, obviously. It's to work within the constraints of  
15 the pattern charges and when there is no pattern charge  
16 directly on point, is to still craft one that is as  
17 narrowly tailored to track the closest pattern charge as  
18 possible, is the best I can tell you right now.

19 I will definitely be in a position to circulate the  
20 substantive charges by close of day tomorrow. So that will  
21 give you at least overnight to think about them.

22 Again, I don't know how long we will have arguments on  
23 Thursday afternoon. But to the extent that we're able to  
24 resolve the motions on Thursday afternoon and to the extent  
25 that the motion or motions are denied, I will want to use

1 Friday morning for the presentation of witnesses for the  
2 defense's case. But I will give you guys a draft charge  
3 tomorrow so you can at least be thinking about it.

4 All right. Thank you, all. It's 6:00. You know the  
5 drill. Please exit as quickly as possible. Have a good  
6 night, everyone.

7 (The proceedings were continued to July 11, 2018.)

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C E R T I F I C A T E

I, Sabrina Lewis, RDR, CRR, Official Court Reporter for the United States District Court for the Northern District of Alabama, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Dated: September 10, 2018



SABRINA LEWIS, FEDERAL OFFICIAL COURT REPORTER